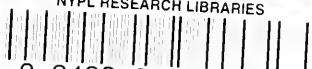


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# JOURNAL OF THE SENATE

OF THE

## STATE OF WASHINGTON

SITTING AS A

# COURT OF IMPEACHMENT

FOR THE TRIAL OF

## JOHN H. SCHIVELY

*State Insurance Commissioner*

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EXTRAORDINARY SESSION, 1909

HELD AT OLYMPIA, THE STATE CAPITAL

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PRINTED BY ORDER OF THE SENATE

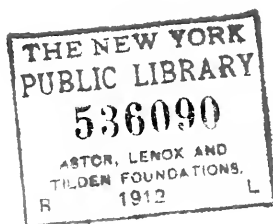
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1909

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COMPILED, ARRANGED AND INDEXED BY  
WM. T. LAUBE,  
SECRETARY OF THE SENATE

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## PERSONNEL OF THE SENATE

NAMES.	Dis- trict.	Counties.	Residence.
Allen, P. L.....	33	King.....	Seattle.
Anderson, A. W.....	2	Stevens.....	Addy.
Arrowsmith, Joseph.....	9	Whitman.....	Palouse.
Bassett, J. D.....	11	Adams.....	Ritzville.
		Franklin.....	
		Walla Walla.....	
Blair, John L.....	24	Clallam.....	Friday Harbor.
		Jefferson.....	
		San Juan.....	
Booth, Robert F.....	37	King.....	Seattle.
Brown, Ed.....	41	Whatcom.....	Blaine.
Bryan, James W.....	23	Island.....	Bremerton.
		Kitsap.....	
		Mason.....	
Cameron, Samuel J.....	15	Benton.....	North Yakima.
Cox, D. H.....	12	Yakima.....	
		Walla Walla.....	Walla Walla.
Davis, Evan C.....	1	Douglas, Ferry.....	Ephrata.
		Grant.....	
Cotterill, Geo. F.....	36	Okanogan.....	Seattle.
Eastham, A. B.....	17	King.....	
Falconer, J. A.....	38	Clarke.....	Vancouver.
Fatland, H. H.....	29	Snohomish.....	Everett.
Fishback, H. O.....	20	Pierce.....	Tacoma.
*Graves, W. G.....	6	Lewis.....	Adna.
Hutchinson, R. A.....	4	Spokane.....	Spokane.
Huxtable, Jesse.....	3	Spokane.....	Spokane.
Kline, Robert L.....	42	Spokane.....	Spokane.
Knickerbocker, I. B.....	30	Whatcom.....	Bellingham.
McGregor, Peter.....	8	King.....	Auburn.
McGowan, Henry S.....	19	Whitman.....	Hooper.
		Pacific.....	McGowan.
		Wahkiakum.....	
Metcalf, Ralph.....	26	Pierce.....	Tacoma.
Meyers, Charles E.....	14	Lincoln.....	Davenport.
Minkler, B. D.....	40	Skagit.....	Lyman.
*Nichols, Ralph D.....	31	King.....	Columbia.
Paulhamus, W. H.....	25	Pierce.....	Sumner.
Piper, George U.....	34	King.....	Seattle.
Polson, Alex.....	21	Chehalis.....	Hoquiam.
Potts, William G.....	35	King.....	Seattle.
Presby, Winthrop B.....	16	Klickitat.....	Goldendale..
		Skamania.....	
Roberts, John L.....	27	Pierce.....	Tacoma.
Rosenhaupt, Harry.....	7	Spokane.....	Spokane.
Ruth, A. S.....	22	Thurston.....	Olympia.
Rydstrom, Arvid.....	28	Pierce.....	Tacoma.
Smith, S. T.....	39	Snohomish.....	Marysville.
Smithson, John H.....	13	Chelan.....	Ellensburg.
		Kittitas.....	
		Asotin.....	Pomeroy.
		Columbia.....	
Stevenson, John R.....	10	Garfield.....	Kelso.
		Cowlitz.....	
Stewart, F. L.....	18	Spokane.....	Foothills.
Whitney, E. C.....	5	Spokane.....	Seattle.
Williams, E. M.....	32	King.....	

\*Excused.

## MANAGERS ON THE PART OF THE HOUSE OF REPRESENTATIVES

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HON. W. W. SPARKS

HON. LEO. O. MEIGS

HON. LESTER P. EDGE

LOREN GRINSTEAD, *Secretary*

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## COUNSEL FOR MANAGERS

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HON. W. P. BELL, *Attorney General*

HON. GEORGE A. LEE, *Assistant Attorney General*

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## COUNSEL FOR RESPONDENT

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HON. GEO. C. ISRAEL

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*Secretary*—WM. T. LAUBE

*Assistant Secretary*—GEORGE GREGORY

*Assistants*—LUCIUS MCGUIRE, NICK MILES,  
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*Stenographic Reporters*—A. C. BAKER, GEORGE  
HARRIGAN, R. W. McREYNOLDS, and  
W. L. FENSTERMACHER

# JOURNAL OF THE SENATE

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## IMPEACHMENT PROCEEDINGS

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SENATE CHAMBER,  
OLYMPIA, WASH., June 25, 1909.

During the afternoon session of the Senate, the following communication was received from a committee of the House of Representatives:

MR. PRESIDENT:

You are hereby notified that the following resolution has been passed by the House of Representatives:

WHEREAS, The joint committee appointed to investigate certain offices have made findings which warrant the impeachment of the insurance commissioner of the State of Washington, John H. Schively; and,

WHEREAS, It is the duty of the House of Representatives to find and present said impeachment; now, therefore, be it

*Resolved by the House of Representatives of the State of Washington,* That John H. Schively, insurance commissioner of the State of Washington, be impeached before the Senate of said state for high crimes or misdemeanors, or malfeasance in office; and be it further

*Resolved,* That a committee consisting of seven members of the House be appointed by the speaker to prepare articles of impeachment and report the same to the House for consideration.

E. B. PALMER,  
E. MILTON STEPHENS,  
T. J. BELL,

*Committee.*

On motion of Senator Rosenhaupt, the Committee on Judiciary of the Senate was instructed to prepare and submit to the Senate rules to govern the Senate when that body shall sit as a court of impeachment.\*

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\* The opening days as set out in this book are extracts from the regular Journal of the Senate, showing only matters pertaining to the impeachment proceedings.

SENATE CHAMBER,  
OLYMPIA, WASH., June 28, 1909.

On the opening of the morning session of the Senate, Senator Graves, chairman of the Committee on Judiciary, submitted the following report:

*To the Senate of the State of Washington:*

We, your Committee on Judiciary, to whom was referred the drafting of the rules to govern your body in the trial of the impeachment proceedings which we have been notified by the House of Representatives will be instituted against John H. Schively, insurance commissioner of the State of Washington, have had the same under consideration, and report back the annexed rules, with the recommendation that they be adopted as the rules to govern the Senate upon the hearing of such impeachment proceedings. We have deemed it proper in this connection to say that, in the trial of such proceedings, the constitution of the state and every precedent renders it clear that the Senate, when hearing impeachment proceedings, sits as a court of justice to try the question of the guilt or innocence of the accused official according to the law and the evidence submitted to the Senate upon the trial, and that we have, therefore, deemed it best to conform so far as possible in the proceedings upon such trial to the procedure in the courts of law of the state, this being the course always pursued in such trials, so far as our investigations advise.

Respectfully submitted,

WILL G. GRAVES, *Chairman*.

We concur in the above report: W. B. Presby, Harry Rosenhaupt, J. W. Bryan, Ralph D. Nichols, I. B. Knickerbocker.

RULES OF PROCEDURE AND PRACTICE IN THE SENATE WHILE SITTING ON  
THE TRIAL OF IMPEACHMENT.

1. Whenever the Senate shall receive notice from the House of Representatives that managers are appointed on their part to conduct an impeachment against John H. Schively, and are directed to carry articles of impeachment to the Senate, the secretary of the Senate shall immediately inform the House of Representatives that the Senate is ready to receive the managers for the purpose of exhibiting such articles of impeachment agreeably to said notice.

2. When the managers of the impeachment shall be introduced at the bar of the Senate and shall signify that they are ready to exhibit articles of impeachment against such person, the presiding officer of the Senate shall inform the managers that the Senate will take proper order on the subject of the impeachment, of which due notice shall be given to the House of Representatives.

3. Upon such articles being presented to the Senate, the Senate shall proceed to the consideration of such articles, and shall continue in session from day to day (Sundays excepted) after the trial shall



commence (unless otherwise ordered by the Senate) until final judgment shall be rendered, and so much longer as may, in its judgment, be needful. Before proceeding to the consideration of the articles of impeachment, the chief justice shall administer the oath hereinafter provided to the members of the Senate then present, and to the other members of the Senate as they shall appear, whose duty it shall be to take the same.

4. The presiding officer shall have power to make and issue, by himself or by the secretary of the Senate, all orders, mandates, writs and precepts authorized by these rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide.

5. The Senate shall have power to compel the attendance of witnesses, the production of books, documents and papers, to enforce obedience to its orders, mandates, writs, precepts and judgments, to preserve order, and to punish in a summary way contempts of and disobedience to its authority, orders, mandates, writs, precepts or judgments, and to make all lawful orders, rules and regulations which it may deem essential or conducive to the ends of justice; and the sergeant-at-arms, under the direction of the Senate, may employ such aid and assistance as may be necessary to enforce, execute and carry into effect the lawful orders, mandates, writs and precepts of the Senate.

6. The presiding officer upon the trial shall direct all the forms of proceeding while the Senate is sitting for the purpose of trying the impeachment and all forms during the trial not otherwise specifically provided for. The presiding officer shall rule upon all questions of evidence and incidental questions, but said ruling may, on demand of one-fifth of the members present, be submitted to the Senate for its decision, and shall be decided by yeas and nays.

7. Upon the presentation of articles of impeachment and the organization of the Senate as hereinbefore provided, a writ of summons shall issue to the accused, reciting said articles and notifying him to appear before the Senate on a day and at a place to be fixed by the Senate and named in such writ, and file his answer to said articles of impeachment, and to stand to and abide by the orders and judgments of the Senate thereon, which writ shall be served by the sergeant-at-arms or his assistant forthwith, either by the delivery of an attested copy thereof to the accused, or, if that cannot conveniently be done, by leaving such copy at his usual place of abode or at the office of the insurance commissioner in the capitol building; and if the writ aforesaid shall fail of service in the manner aforesaid, the proceedings shall not thereby abate, but further service may be made in such manner as the Senate shall direct. If the accused, after service, shall fail to appear, either in person or by attorney, on the day so fixed therefor as aforesaid, or, appearing, shall fail to file his answer to such articles of impeachment, the trial shall proceed nevertheless

as upon a plea of not guilty. If a plea of guilty shall be entered, judgment may be entered thereon without further proceedings.

8. At the convening of the Senate on the day appointed for the return of the summons against the accused the legislative and executive business of the Senate shall be suspended and the secretary of the Senate shall administer an oath to the returning officer in the form following, viz:

"I, ....., do solemnly swear that the return made by me upon the process issued on the ..... day of ....., 1909, by the Senate against John H. Schively is truly made, and that I have performed such service as herein described. So help me God."—which oath shall be entered at large on the records.

9. The accused shall then be called to appear and answer the articles of impeachment against him. If he appear, or any person for him, the appearance shall be recorded, stating particularly if by himself or by agent or attorney, naming the person appearing and the capacity in which he appears. If he do not appear, either personally or by agent or attorney, that fact shall be recorded.

10. On the day appointed for the trial of impeachment, the legislative and executive business of the Senate shall be suspended and the secretary shall give notice to the House of Representatives that the Senate is ready to proceed with the impeachment of John H. Schively in the Senate chamber.

11. The secretary of the Senate shall record all the proceedings, and the same shall be reported in the same manner as the legislative proceedings of the Senate. It shall be the duty of the secretary of the Senate to procure the services of competent stenographers to report all the testimony and proceedings in impeachment, and to have the same extended and incorporated in the proceedings of the Senate.

12. Counsel for the parties shall be admitted to appear and be heard upon the impeachment.

13. All motions made by the parties or their counsel shall be addressed to the presiding officer, and if he or any senator shall require it they shall be committed to writing and read at the secretary's table.

14. Witnesses shall be examined by one person on behalf of the party producing them and then cross-examined by one person on the other side. Senators shall not propound questions to witnesses, but questions may be submitted in writing to the presiding officer, whose ruling thereon shall be governed as all other questions of fact.

15. All preliminary or interlocutory questions and all motions shall be argued for not exceeding fifteen minutes on each side, unless the Senate shall by order extend the time.

16. The case on each side shall be opened by one person. The final argument on the merits may be made by two persons on each side, and the argument shall be opened and closed on the part of the House of Representatives.

17. On the final question whether the impeachment is sustained, the yeas and nays shall be taken on each article of impeachment sep-

arately, and if the impeachment shall not, upon any of the articles presented, be sustained by the votes of twenty-eight members, a judgment of acquittal shall be entered; but if the person accused in such articles of impeachment shall be convicted upon any of said articles by the votes of twenty-eight of the members, the Senate shall proceed to pronounce judgment, and a certified copy of such judgment shall be deposited in the office of the secretary of state.

18. All interlocutory orders and decisions shall be made by the presiding officer, but, upon demand of one-fifth of the members of the Senate, any such interlocutory order or decision shall be submitted to the house and decided by a vote taken upon yeas and nays. The decision shall be entered upon the record, whether made by the presiding officer or by the house, and the record shall also show whether the question was decided by the presiding officer or by the house. All decisions shall be made without debate, except when the doors shall be closed for deliberation, and in that case no member shall speak more than once on one question, and for not more than ten minutes on an interlocutory question; and for not more than fifteen minutes on the final question, unless by consent of the Senate, to be had without debate.

19. The following oath shall be administered to the witnesses, viz:

"You, . . . . ., do swear (or affirm, as the case may be) that the evidence you shall give in the impeachment proceedings against John H. Schively now pending before this body shall be the truth, the whole truth, and nothing but the truth. So help you God."

—which oath shall be administered by the secretary or by the presiding officer.

The following form of subpoena shall be issued on the application of the managers of the impeachment, or of the accused official, or of his or their counsel:

*"State of Washington, to . . . . ., greeting:*

"You and each of you are hereby commanded to appear before the Senate of the State of Washington on the . . . . . day of . . . . ., 1909, at the Senate chamber, in the city of Olympia, then and there to testify as to matters upon which you may be interrogated in the cause which is before the Senate in which the House of Representatives have impeached John H. Schively.

"Fail not.

"Witness the Honorable A. S. Ruth, President *pro tempore* of the Senate, at the city of Olympia this . . . . . day of . . . . ., A. D. 1909.

.....  
*"Secretary of the Senate."*

To the subpœna shall be attached the following form of direction for service:

*"The State of Washington, to ..... greeting:*

"You are hereby commanded to serve and return the within subpœna according to law.

"Dated at Olympia, this ..... day of ....., A. D. 1909.

.....

*"Secretary of the Senate."*

The following oath shall be administered to the members of the Senate before sitting for the trial of the impeachment proceedings:

"I solemnly swear (or affirm, as the case may be) that in all things appertaining to the trial of the impeachment of John H. Schively, now pending, I will do impartial justice according to the constitution and the laws and according to the law and the evidence that may be produced before this body upon the hearing of such proceeding. So help me God."

Such oath shall be administered by the chief justice of the supreme court of the state prior to proceeding with the hearing of the trial.

The following form of summons shall be issued and served upon the accused official:

"THE STATE OF WASHINGTON, SS:

*"The State of Washington to John H. Schively, greeting:*

"Whereas, The House of Representatives of the State of Washington did on the ..... day of ....., A.D. 1909, exhibit to the Senate articles of impeachment against you, the said John H. Schively, in the words following (here insert articles) and demand that you should be put to answer the accusations set forth in said articles, and that such proceedings, examinations, trials and judgments might be thereupon had as are agreeable to law and justice;

"Now, therefore, you, the said John H. Schively, are hereby summoned to be and appear before the Senate of the State of Washington, at the Senate chamber, in the city of Olympia, on the ..... day of ....., 1909, at ..... M., then and there to answer the said articles of impeachment, and then and there to abide by, obey and perform such orders, directions and judgments as the Senate of the State of Washington shall make in the premises, according to the constitution and laws of the United States and of the State of Washington, and therein fail not.

"Witness the Honorable A. S. Ruth, president *pro tempore* of the Senate, at the city of Olympia, this ..... day of ....., A. D. 1909.

.....

*"Secretary of the Senate."*

Upon said writ of summons the following return or precept shall be endorsed:

"THE STATE OF WASHINGTON, SS:

*"The State of Washington, to ..... greeting:*

"You are hereby commanded to deliver to and leave with John H. Schively, if conveniently to be found, or, if not, to leave at his usual

place of abode or at his usual place of business, in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and, in whichsoever way you perform the service, let it be done at least ..... days before the appearance day mentioned in said writ of summons.

"Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

"Witness the Honorable A. S. Ruth, president *pro tempore* of the Senate, at the city of Olympia, this ..... day of ....., A. D. 1909.

.....

"Secretary of the Senate."

20. The accused official shall be required to join issue upon each article of the articles of the impeachment proceeding, which he may do by answer, and by such answer may present, as to each article, the question of the sufficiency of the facts alleged as cause for impeachment, a denial of such facts, or new matter tending to defeat their effect. In the event that new matter is pleaded as a defense, the managers shall be required to join issue thereupon. The rules of the common law, save as modified by statute, and as now administered by the courts of this state, shall govern in the decision of all questions of evidence and of all interlocutory matters arising during the progress of the trial whereinsoever they are applicable. The board of managers shall open the case, presenting the evidence to sustain the articles of impeachment. The accused official shall then introduce such evidence as he desires, and the managers may close with rebuttal evidence. At the conclusion of the evidence and the arguments, the secretary of the Senate shall read the several articles successively, and after the reading of each article the secretary will put the question of guilty or not guilty to each senator, who shall rise in his place, as follows: "Mr. Senator: How say you, Is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?" Each senator shall thereupon answer "Guilty" or "Not Guilty" and his vote shall be so recorded, and, in addition, he may have entered upon the record an explanation of his vote.

21. Should the sufficiency, as matter of law, of the allegations contained in the articles of impeachment or of the evidence adduced in support thereof to warrant an impeachment, be questioned at any stage during the proceedings, such question shall be then tried and determined by a yea and nay vote. Should the articles be declared legally insufficient to warrant impeachment by such vote, or the evidence adduced in support thereof be so declared, the impeachment proceedings shall thereupon terminate, but upon the final question of guilty or not guilty such prior decision shall not be conclusive, but the whole question, both upon the law and the facts, shall be open for consideration.



On motion of Senator Graves, the rules recommended by the Committee on Judiciary for the conduct of impeachment proceedings were adopted by roll call.

Voting aye: Senators Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cotterill, Cox, Davis, Eastham, Fatland, Fishback, Graves, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Myers, Minkler, Nichols, Polson, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Whitney, Williams, Mr. President—35.

Absent or noting: Senators Allen, Booth, Cameron, Falconer, Metcalf, Paulhamus, Piper—7.

SENATE CHAMBER,

OLYMPIA, WASH., June 30, 1909.

During the afternoon session of the Senate the following message was received from the House of Representatives:

MR. PRESIDENT:

The House has adopted articles of impeachment against John H. Schively, insurance commissioner of the State of Washington, and, pursuant to motion, the speaker has appointed as the board of managers of the impeachment proceedings before the bar of the Senate the following: Messrs. Meigs, Sparks, Hubbell, Lambert, Todd, Edge, Jackson (F. C.), Buchanan, and McGregor.

LOREN GRINSTEAD, *Chief Clerk*.

The secretary was instructed to notify the House that the Senate is ready to receive the board of managers in the matter of the impeachment proceedings against John H. Schively, insurance commissioner.

Messrs. Sparks, Lambert, Todd and Jackson (F. C.), members of the board of managers, appeared at the bar of the Senate and presented the articles of impeachment in the matter of the proceedings instituted by the House against John H. Schively, insurance commissioner of the State of Washington, and the same were read by the secretary of the Senate, as follows, to-wit:

## ARTICLES OF IMPEACHMENT.

*Articles exhibited by the House of Representatives of the State of Washington in the name of themselves and of all the people of the State of Washington against John H. Schively, insurance commissioner of the State of Washington, in maintenance and support of their impeachment against him for high crimes and misdemeanors and malfeasance in office.*

## ARTICLE I.

That at all times since the 13th day of January, 1909, J. H. Schively has been and now is the duly elected, qualified and acting Insurance Commissioner of the State of Washington; that for eight years last past and until the 13th day of January, 1909, said J. H. Schively was the duly appointed and acting Deputy Insurance Commissioner of the State of Washington.

That the said J. H. Schively, unmindful of the duties of his office, did on the dates hereinafter mentioned conduct himself in a manner highly arbitrary, oppressive and unjust, and was guilty of extortion in violation of the Constitution and laws of the State of Washington in the following manner, to-wit:

That F. J. Martin of Seattle, Washington, on or about April 1st, 1905, represented to J. H. Schively, Deputy Insurance Commissioner, that he desired to enter five insurance companies to the State of Washington; that the said Schively represented to the said Martin that the usual custom of the Insurance Department was to charge an advance examination fee of \$300.00 each for the admission of companies, but that as the said Martin desired to enter several companies, the advance examination charge would be two hundred dollars (\$200.00) each; that the said Martin, acting upon the said representations, did enter the following companies on the dates herein specified, and did pay to the said J. H. Schively, as Deputy Insurance Commissioner, the entrance fees in advance set opposite each company herein:

Indiana Millers' Fire Insurance Company of Indianapolis, Indiana, in the month of April, 1905, paid entrance fees through F. J. Martin of \$235.00,

Central Manufacturers' Mutual Insurance Company of Van Wert, Ohio, in the month of April, 1905, paid entrance fees through F. J. Martin of \$235.00,

The American Guarantee Fund Mutual Fire Insurance Company of St. Louis, Mo., in the month of May, 1905, paid entrance fees through F. J. Martin of \$235.00,

Texas National Fire Insurance Company of Fort Worth, Texas, in the month of April, 1907, paid entrance fees through F. J. Martin of \$235.00,

Lumbermen's Mutual Insurance Company of Mansfield, Ohio, in the month of August, 1905, paid entrance fees through F. J. Martin of \$235.00.

That in none of the instances herein mentioned did the state receive more than thirty-five (\$35.00) dollars from each of these companies as the statutory entrance fee for the admission of insurance companies to do business in this state.

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner aforesaid, by demanding of and receiving from the said F. J. Martin the sum of two hundred and thirty-five (\$235.00) dollars as the entrance fee from each of the companies herein mentioned was guilty of a high crime and misdemeanor and malfeasance in office and extortion, unjust, arbitrary and oppressive conduct.

## ARTICLE II.

That in January, 1908, the said J. H. Schively, as Deputy Insurance Commissioner, represented to Chas. S. Lebo that the costs of admission of insurance companies to the State of Washington were two hundred and thirty-five dollars (\$235.00) each; that Chas. S. Lebo came to Olympia, Washington, in March, 1908, and sought to admit the Commercial Fire Insurance Company of Texas and the Southern National Fire Insurance Company of Texas to do business in this state; that the said Schively thereupon represented to the said Lebo that the entrance fees would be two hundred and thirty-five dollars (\$235.00) for each company; that said Lebo stated that he could not pay that amount, whereupon the said Schively arranged with him to admit these two companies, and did admit these two companies in March, 1908, upon the payment of the following fees: One hundred and thirty-seven (\$137.00) dollars for the Commercial Fire Insurance Company, and thirty-seven dollars (\$37.00) for the Southern National Insurance Company; the said Schively at the time stating to the said Lebo that he could pay the balance of three hundred dollars (\$300.00) to cover examination fees as soon as he was able to do so.

WHEREFORE, The said J. H. Schively, Deputy Insurance Commissioner as aforesaid, was guilty of extortion, malfeasance in office, high crimes and misdemeanors, and unjust, arbitrary and oppressive conduct in demanding of and receiving from the said Lebo a greater sum than he was by statute allowed to receive.

## ARTICLE III.

That in September, 1908, when the Boston Insurance Company of Boston, Massachusetts, entered the State of Washington, the company paid the said J. H. Schively, Deputy Insurance Commissioner, one hundred dollars (\$100.00) for "verification of report," which amount was receipted for by J. H. Schively as Deputy Insurance Commissioner on September 14, 1908; that the State of Washington never received the one hundred dollars (\$100.00) nor any part thereof; that J. H. Schively, Deputy Insurance Commissioner, was not authorized nor permitted by statute to collect this or receive any other amount for verification of report.

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commis-

sioner, in demanding of and receiving from the said Boston Insurance Company one hundred dollars (\$100.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE IV.

That the said J. H. Schively, as Deputy Insurance Commissioner, on February 19, 1907, demanded of and received from the Capital Life Insurance Company of Colorado, the sum of two hundred and thirty-five dollars (\$235.00), two hundred of which appears in the receipt given by said Schively for "verifying report"; that from this amount the state received nothing but the thirty-five dollar (\$35.00) entrance fee; that the said J. H. Schively had no authority in law for the collection of anything but a thirty-five dollar (\$35.00) entrance fee from said company.

WHEREFORE, The said Schively in demanding and receiving from the Capital Life Insurance Company the sum of two hundred and thirty-five dollars (\$235.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE V.

That on February 4, 1907, the said J. H. Schively, as Deputy Insurance Commissioner, made the following representations to the Colorado National Life Assurance Company, of Denver, Colorado:

"In accordance with your request of January 28th, I am sending you under separate cover all blanks necessary to be filled out in seeking admittance to transact business in this state, together with copies of all insurance laws. The entrance fees are two hundred and thirty-five dollars, thirty-five dollars statutory entrance fees and two hundred dollars for the verification of your first report, all payable in advance.

"Very truly yours,

"J. H. SCHIVELY,

*"Deputy Insurance Commissioner";*

That the Colorado National Life Assurance Company paid an entrance fee according to the representations contained in said letter of two hundred and thirty-five dollars (\$235.00) and received a receipt covering said item; that after the payment of said sum and on March 14th, 1907, the said Schively wrote the following letter:

*"H. L. Sears, Secretary Colorado National Life Assurance Co., Denver, Colorado,*

"Dear Sir: Herewith please find your certificate of authority as under current date, together with vouchers covering your several checks. The two licenses have been forwarded direct to your agents. I bid you welcome to the State of Washington and wish you every success. It will give me pleasure to advance your interests in whatever way I can that may be consistent with an impartial administration of this department.

"Very truly yours,

"J. H. SCHIVELY,

*"Deputy Insurance Commissioner";*

That the State of Washington received no part of the said two hundred and thirty-five dollars (\$235.00) except the sum of thirty-five dollars (\$35.00), which was the statutory entrance fee.

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the said Colorado National Life Assurance Company the entrance fee of two hundred thirty-five dollars (\$235.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE VI.

That the said J. H. Schively, Deputy Insurance Commissioner, in August, 1907, received from the Commonwealth Insurance Company of New York one hundred and thirty-seven dollars (\$137.00) and receipted for the said amount as follows:

"INSURANCE DEPARTMENT,

"STATE OF WASHINGTON,

"OLYMPIA, August 16, 1907.

"Received from Commonwealth Insurance Company of New York one hundred and thirty-seven dollars (\$137.00), account of entrance fees \$35.00, verifying report \$100.00, one license \$2.00.

"J. H. SCHIVELY,

*"Deputy Insurance Commissioner";*

That the state received no part of said sum, except the sum of thirty-seven dollars (\$37.00), which was the statutory fee, and the fee for the agent's license.

WHEREFORE, J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the Commonwealth Insurance Company of New York the said one hundred and thirty-seven dollars (\$137.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE VII.

That in March, 1908, the said J. H. Schively, as Deputy Insurance Commissioner, demanded of and received from the Illinois National Fire Insurance Company of Springfield, Illinois, the sum of two hundred and thirty-seven dollars (\$237.00), thirty-five dollars "on account of entrance fees, one license \$2.00, verifying report two hundred dollars (\$200.00)"; that the State of Washington received no part of said sum except the statutory fees of thirty-seven dollars (\$37.00).

WHEREFORE, J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the Illinois National Fire Insurance Company the sum of two hundred and thirty-seven dollars (\$237.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE VIII.

That on December 6, 1906, said J. H. Schively, as Deputy Insurance Commissioner, received from the Jefferson Fire Insurance Company of Philadelphia, upon the entrance of said company to this state, the sum



of one hundred and thirty-five dollars (\$135.00), thirty-five dollars entrance fees and one hundred dollars (\$100.00) for "verifying report"; that the State of Washington received no part of said sum except the sum of thirty-five dollars (\$35.00).

WHEREFORE, The said J. H. Schively in demanding of and receiving from the Jefferson Fire Insurance Company of Philadelphia the sum of one hundred and thirty-five dollars (\$135.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE IX.

That in January, 1908, said J. H. Schively, Deputy Insurance Commissioner, demanded of and received from the Massachusetts Bonding and Insurance Company of Boston, Mass., two hundred and forty dollars (\$240.00), and on January 22, 1908, issued receipts covering said item as follows: "Entrance fee \$35.00, one license \$5.00, verification of report \$200.00; that the State of Washington received no part of said sum except the thirty-five dollars (\$35.00) statutory fee and \$5.00 for agent's license.

WHEREFORE, J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the Massachusetts Bonding and Insurance Company the sum of two hundred and forty dollars (\$240.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE X.

That in June, 1907, said J. H. Schively, Deputy Insurance Commissioner, demanded of and received from the National Live Stock Insurance Association of Portland, Oregon, one hundred and thirty-five dollars (\$135.00) and receipted for the said sum as follows: "Entrance fees \$35.00, official examination \$100"; that the state of Washington received no part of said sum except the statutory entrance fee of thirty-five dollars (\$35.00).

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the National Life Stock Insurance Association the sum of one hundred and thirty-five dollars (\$135.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE XI.

That said J. H. Schively, as Deputy Insurance Commissioner, on June 1st, 1908, received two hundred and thirty-five dollars (\$235.00) from the Philadelphia Casualty Company of Philadelphia and receipted for said item as follows: "Entrance fee \$35, verifying report \$200.00"; that the State of Washington received no part of the same except the statutory fee of thirty-five dollars (\$35.00).

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the Philadelphia Casualty Company the sum of two hundred and thirty-five dollars (\$235.00) was

guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE XII.

That the said J. H. Schively, as Deputy Insurance Commissioner, on January 1, 1907, received from the Seaboard Fire and Marine Insurance Company of Galveston, Texas, one hundred and thirty-five dollars (\$135.00) as entrance fees to this state and receipted for the said item as follows: "Verifying report \$100.00, entrance fee \$35.00"; that the State of Washington received no part of said sum except the statutory entrance fee of thirty-five dollars (\$35.00).

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the Seaboard Fire and Marine Insurance Company the sum of one hundred and thirty-five dollars (\$135.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE XIII.

That said J. H. Schively, as Deputy Insurance Commissioner, on February 10, 1908, received from the United Surety Company of Baltimore, Maryland, an entrance fee of two hundred and forty-five dollars (\$245.00), which was receipted for by him, "account of entrance fee and examination \$235, two licenses \$10.00"; that upon the same day the money was received and receipt therefor issued the said Schively granted the United Surety Company a certificate of authority to transact business in this state; that the State of Washington received no part of said two hundred and forty-five dollars (\$245.00) except the sum of thirty-five dollars (\$35.00) for statutory entrance fees and the two agents' license fees of ten dollars (\$10.00).

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the United Surety Company the sum of two hundred and forty-five dollars (\$245.00) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE XIV.

That on June 13, 1908, Henry Carstens, of Seattle, Washington, paid to said J. H. Schively, Deputy Insurance Commissioner, one hundred and seventy dollars (\$170) for the entrance to this state of the Dixie Fire Insurance Co. of North Carolina, and the North State Fire Insurance Company of North Carolina; that the State of Washington received no part of said sum except the statutory fees of thirty-five dollars (\$35) each for the entrance of each company.

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the said Henry Carstens the sum of one hundred and seventy dollars (\$170) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE XV.

That on March 10, 1908, the said J. H. Schively, as Deputy Insurance Commissioner, demanded of and received from the Michigan Commer-

cial Insurance Company, of Lansing, Michigan, the sum of one hundred and thirty-five dollars (\$135) as entrance fees to this state; that the State of Washington received no part of said sum except the statutory fee of thirty-five dollars (\$35).

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the Michigan Commercial Insurance Company the sum of one hundred and thirty-five dollars (\$135) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE XVI.

That on May 4, 1908, said J. H. Schively, as Deputy Insurance Commissioner, represented to the Standard Fire Insurance Company of Keokuk, Iowa, that the cost of admission to the state would be two hundred and thirty-five dollars (\$235), payable in advance; that in August, 1908, said J. H. Schively received from said company through Mr. Fred Tebbins, of Spokane, the amount demanded in his previous letter to the Iowa company, and thereupon license was issued to said company to do business in this state; that the State of Washington received no part of said sum except the statutory entrance fee of thirty-five dollars (\$35).

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, in demanding of and receiving from the Standard Fire Insurance Company of Keokuk, through its Spokane agent, Fred Tebbins, the sum of two hundred and thirty-five dollars (\$235) was guilty of extortion, high crimes and misdemeanors and malfeasance in office.

#### ARTICLE XVII.

That on July 31, 1907, said J. H. Schively, as Deputy Insurance Commissioner, made a perfunctory examination of the Washington Hardware and Implement Dealers' Mutual Fire Insurance Association of Spokane, Washington; that said examination consumed in time less than half an hour; that said Schively, as such Deputy Insurance Commissioner, demanded of E. W. Evenson, the secretary of said association, the sum of two hundred dollars (\$200) for said examination; that said Evenson refused to pay said amount, for the reason that the same was excessive, exorbitant and extortionate; that thereupon said Schively reduced the amount demanded to the sum of one hundred dollars (\$100) and collected of and received from said association, through said Evenson, the sum of one hundred dollars (\$100), which sum was greatly in excess of his expenses incurred in said examination; that said Schively did not at that time, nor at any other time, present to said association, nor to said Evenson, in detail the items nor any itemized list of his expenses incurred in making such examination, as by law required to do.

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, by reason of not presenting the detailed statement of his expenses as by law required, and by demanding and receiving a sum

greatly in excess of his expenses incurred in making said examination, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

#### ARTICLE XVIII.

That on December 12, 1906, said J. H. Schively, as Deputy Insurance Commissioner, made an examination of the books, records and securities of the Western Union Life Insurance Company of Spokane, Washington, for which examination said Schively demanded from Philip Harding, secretary of said company, the arbitrary sum of two hundred dollars (\$200); that said Harding paid said Schively as such Deputy Insurance Commissioner the said sum so demanded by him, which sum was greatly in excess of his expenses incurred in said examination; that no detailed or itemized list of expenses was presented to said Harding, nor to said company, showing the expenses said Schively incurred in making said examination; that the laws of this state required such detailed or itemized list or statement of expenses to be presented to the company examined.

That on May 12, 1908, said J. H. Schively, as Deputy Insurance Commissioner, examined the books, records and securities of the Western Union Life Insurance Company of Spokane, Washington, and, without presenting any detailed or itemized list of his expenses to said company, demanded for said official examination the arbitrary sum of thirty-five dollars (\$35); that on said demand said sum was paid to and received by said Schively.

WHEREFORE, The said J. H. Schively, as Deputy Insurance Commissioner, by reason of not presenting a detailed statement of his expenses as by law required, and by demanding and receiving a sum greatly in excess of his expenses incurred in said examination, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

#### ARTICLE XIX.

That on June 12, 1906, said J. H. Schively, as Deputy Insurance Commissioner of the State of Washington, examined the Farmers' Mutual Livestock Insurance Company of Spokane, Washington; that said examination was perfunctory in its nature and consumed less than half an hour; that said Schively demanded of and received from said company the arbitrary sum of one hundred dollars (\$100) for said examination, which sum was greatly in excess of his expenses incurred in said examination; that said Schively did not at that time, nor at any other time, present to said company any detailed or itemized statement of his expenses incurred in making said examination, as by law he was required to do.

That on October 9, 1906, E. E. Liggett, Insurance Commissioner of the State of Idaho, and said J. H. Schively, Deputy Insurance Commissioner, made a joint examination of the affairs of said Farmers' Mutual Livestock Insurance Company of Spokane, Washington, for which ex-

amination a demand of three hundred dollars (\$300) was made and a check was issued by said company to said Liggett, on the understanding then and there had with the said Liggett and Schively by the officers of said company that said Schively should receive one-half of said amount of three hundred dollars (\$300) in payment of his fees for such examination, which sum was greatly in excess of the expenses incurred in said examination; that this subsequent examination was also a perfunctory examination, consuming possibly one-half hour; that said Schively did not at this time, nor at any other time, furnish said company with a detailed or itemized list or statement of the expenses incurred in making such examination, as by law required.

WHEREFORE, The said J. H. Schively, as such Deputy Insurance Commissioner, by reason of not presenting a detailed statement of expenses and by demanding and receiving a sum greatly in excess of his expenses incurred in said examination, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

#### ARTICLE XX.

That on April 16, 1907, said J. H. Schively, as Deputy Insurance Commissioner, examined the books, records and securities of the Walla Walla Fire Insurance Company of Walla Walla, Washington; that subsequently and on July 29, 1907, an official examination was made of the same company; that in each case said Schively demanded of and received from said company the arbitrary sum of two hundred dollars (\$200) for making such examinations, which sums were greatly in excess of his expenses incurred in said examinations; that in neither case did said Schively present to said company any itemized or detailed statement of expenses incurred in making said examinations or either of them, as by law he was required to do.

WHEREFORE, The said J. H. Schively, as such Deputy Insurance Commissioner, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

#### ARTICLE XXI.

That on May 7, 1907, said J. H. Schively, Deputy Insurance Commissioner, demanded of and received from the Union Guaranty Association of Portland, Oregon, the arbitrary sum of two hundred dollars (\$200) to cover an examination of the books, records and securities of said association, which sum was greatly in excess of his expenses incurred in said examination; that said examination was perfunctory and occupied but a short time; that no detailed or itemized list or statement of expenses incurred in making said examination was presented to said association, as by law required.

WHEREFORE, The said J. H. Schively, as such Deputy Insurance Commissioner, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

## ARTICLE XXII.

That on April 7, 1908, said J. H. Schively, as Deputy Insurance Commissioner, examined the books, records and securities of the Falls City Fire Insurance Company of Spokane, Washington; that the time spent in making said examination was a few hours; that said Schively demanded of and received from said company the arbitrary sum of fifty dollars (\$50) to cover expenses incurred in making said examination, which sum was greatly in excess of his expenses incurred in said examination; that no detailed or itemized statement or list of expenses was furnished to the company by said Schively, as by law required.

WHEREFORE, The said J. H. Schively, as such Deputy Insurance Commissioner, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

## ARTICLE XXIII.

That on January 7, 1908, said J. H. Schively, as Deputy Insurance Commissioner, represented to the Atlas Insurance Company of Des Moines, Iowa, as follows: "The costs of admission are \$235—\$35 statutory fees and \$200 for verification of the company's securities and first report, all of which is payable in advance"; that on February 13, 1908, exactly the same representation was made by said Schively to T. H. Meson, secretary of said company; that C. S. Best, of Seattle, Washington, the western representative of said company, advised said company that the only entrance fee that could be charged was a thirty-five-dollar (\$35) entrance fee; that on receipt of said advice from said Best, said company again wrote to said Schively, as such Deputy Insurance Commissioner, and received a letter containing the same representations above set forth; that thereupon said Best went to said Schively's office in Olympia and had a conversation with said Schively concerning the representations made to said company as above mentioned, and about the attempt of said Schively to extort from said company an advance fee of two hundred dollars (\$200) not authorized by statute; that said Schively, as such Deputy Insurance Commissioner, did then and there, to-wit, on or about the 15th day of July, 1908, state to said Best that if he (Schively) had known that said company was to be represented in this state by said Best that the letters and representations above referred to would not have been sent to the company; that the company would have been admitted to do business in the State of Washington on payment of a fee of thirty-five dollars (\$35), and that thereafter, if Mr. Best would notify said Schively of his desire to represent certain insurance companies, that then and thereupon such companies would be admitted to the state on payment of a fee of thirty-five dollars (\$35); that thereafter said Atlas Fire Insurance Company declined to consider the matter of entering the State of Washington to do business, and resented the oppressive, unjust, illegal and unwarranted conduct of said Schively; that on examination under oath before the legislative investigating committee, said Schively admitted that in all probability the conversation with Mr. Best above referred to occurred, and

stated that while he would admit companies represented by said Best upon the basis of thirty-five dollars (\$35), that other companies would have to pay two hundred and thirty-five dollars (\$235).

WHEREFORE, Said J. H. Schively, as Deputy Insurance Commissioner, was guilty of attempted extortion, arbitrary and oppressive conduct and malfeasance in office.

#### ARTICLE XXIV.

That on July 10, 1906, said J. H. Schively, as Deputy Insurance Commissioner, was elected president of the Pacific Livestock Association of Spokane, Washington, and qualified for such office August 4, 1906; that he continued to hold the office of president of said association and act as such until October 8, 1906, or thereabouts; that during the entire time said Schively was president of said association he was Deputy Insurance Commissioner of the State of Washington and drew his salary as such; that during his incumbency of the office of president of said association he drew in salary and commissions from said association over \$2,500; that during his connection with said association as president, and while he was Deputy Insurance Commissioner of the State of Washington, said Schively received from said association two checks, presumably to cover examination charges for examinations made of said association as such Deputy Insurance Commissioner, one check being for one hundred dollars (\$100), and the other for two hundred dollars (\$200), which sums were greatly in excess of the expenses incurred in said examinations; that shortly after he resigned the presidency of said association, and on November 5, 1906, said Schively, as such Deputy Insurance Commissioner, wrote a letter to W. T. Melvin of Everett, Washington, in which he stated that said association was one of the most reliable and stable livestock associations in the state, said Schively well knowing, at the time of writing said letter, that said association was insolvent; that shortly after the date of said letter said Pacific Livestock Association went into the hands of a receiver.

WHEREFORE, By reason of such conduct and practices, said J. H. Schively, as Deputy Insurance Commissioner, was guilty of conduct unbecoming a public official, gross improprieties, malfeasance in office and high crimes and misdemeanors.

#### ARTICLE XXV.

That on or about the tenth day of March, 1909, in the county of Spokane, State of Washington, said J. H. Schively, Insurance Commissioner of the State of Washington, did then and there commit the crime of perjury as follows, to-wit:

That on or about the tenth day of March, 1909, a grand jury in and for Spokane county, State of Washington, was duly and lawfully impaneled, sworn, charged and organized by William A. Huneke, one of the judges of the superior court for said Spokane county, State of Washington, and that thereafter, on the twentieth day of April, 1909, said grand jury organized as aforesaid, was then and there lawfully in

session and was then and there lawfully engaged in a certain investigation to determine whether J. B. Schrock, W. J. Walker, F. H. Hilliker and W. M. Hunter had theretofore in Spokane county, State of Washington, and within three years from said date committed the crime of larceny by embezzlement of certain sums of money, the personal property of Pacific Livestock Association, a corporation, while acting as trustees of said corporation, the said grand jury being then and there duly authorized and empowered by law and having competent jurisdiction to conduct said investigation; that thereupon said J. H. Schively was then and there called and in due form of law sworn as a witness by Ben. F. Davis, the duly appointed, qualified and acting foreman of said grand jury, who then and there administered to said J. H. Schively an oath that the evidence which he, the said J. H. Schively, was then and there about to give in the matter of said investigation then and there pending before said grand jury should be the truth, the whole truth and nothing but the truth. The said Ben. F. Davis, as foreman of said grand jury, then and there being authorized and empowered by law to administer said oath to said J. H. Schively in that behalf, and that said J. H. Schively, then and there being duly sworn as a witness as aforesaid, it then and there became and was a matter material to said investigation whether the said witness, the said J. H. Schively, on or about the tenth day of July, 1906, entered into an agreement or contract or had an understanding with E. R. Ward, said E. R. Ward then and there being the president and trustee of said Pacific Livestock Association, or with said E. R. Ward and J. B. Schrock, W. J. Walker, F. H. Hilliker, S. G. Copeland and W. M. Hunter, they being officers of said company, or with any of them, whereby said E. R. Ward should resign as president and trustee of said corporation in favor of said J. H. Schively and said J. H. Schively should be elected the president and trustee of said corporation in the place and stead of said E. R. Ward in consideration of the payment by said J. H. Schively to said E. R. Ward of the sum of \$1,200, and whether said E. R. Ward on or about said tenth day of July, 1906, so transferred or assigned to said J. H. Schively any interest, rights or privileges in said corporation or to the revenues, commissions or mileage derived therefrom, or any part thereof, for any sum of money or for any consideration whatsoever; and whether the resignation of said E. R. Ward as president and trustee of said corporation on or about the date aforesaid, and the election of said J. H. Schively as president and trustee of said corporation in the place and stead of said E. R. Ward was due to or in pursuance of any agreement, contract or understanding between said E. R. Ward and said J. H. Schively or between said Ward, Schrock, Walker, Hilliker, Copeland and Hunter and said Schively, or on account of any consideration whatsoever flowing or to flow from said J. H. Schively to said E. R. Ward; and whether said J. H. Schively, on or about said last mentioned date, executed and delivered or caused to be delivered to said E. R. Ward, directly or indirectly, three certain promissory notes for \$400 each, each payable to said Ward or his assigns in thirty, sixty and



ninety days, in pursuance of said agreement, contract or understanding, or at all; and whether the said J. H. Schively was thereafter, with his knowledge and consent, charged with three items of \$400 each on account of the payment by said Schively or by said corporation for the benefit of and by the authority and with the knowledge and consent of said Schively of the sum of \$1,200 to said E. R. Ward or his assigns in payment of said three promissory notes of \$400 each, and whether thereafter the said J. H. Schively, or the duly authorized officers of said corporation, for his benefit and by his authority and with his knowledge and consent, drew three checks for \$400 each in favor of said E. R. Ward or in favor of the Fidelity National Bank, of Spokane, for the use and benefit of said E. R. Ward or his assigns, in payment of said three promissory notes of \$400 each; and whether said checks drawn as aforesaid were at the time of the drawing thereof, or at any time, charged to the account of said J. H. Schively upon the books of said corporation by the authority and with the knowledge and consent of said J. H. Schively; and whether said J. H. Schively, during the months of July, August, September and October, 1906, and while president and trustee of said corporation was paid a salary of \$400 per month for his services as an officer of said corporation; and whether said J. H. Schively received any other compensation whatsoever, directly or indirectly, for his services as such officer; and whether said J. H. Schively during the period of time last aforesaid, and while an officer of said corporation as aforesaid, was paid for his services as such officer upon the basis of commissions or mileage on insurance written by said corporation or by agents employed by it; and whether, on or about the eighth day of October, 1906, said J. H. Schively entered into an agreement, contract or understanding with one Bennington wherein and whereby said J. H. Schively, for a consideration of \$400, paid to him or to said corporation for his use and benefit by said Bennington, agreed to resign and did resign as a trustee and officer of said corporation in favor of said Bennington, and did cause or procure or aid in causing or procuring the election of said Bennington as an officer and trustee of said corporation in consideration of the payment to said J. H. Schively by said Bennington of the sum of \$400 as aforesaid; and whether said J. H. Schively, during the time of his service as president and trustee of said corporation, received any sums of money whatsoever from said corporation for his services as such president and trustee or at all, other than a salary of \$400; and whether said J. H. Schively, while serving as president and trustee of said corporation as aforesaid, during the period of time aforesaid, received commissions from said corporation amounting to \$1,815.60, or to any other sum; and whether said J. H. Schively, while serving as president and trustee of said corporation as aforesaid, and during the time aforesaid, or at any subsequent time, received the sum of \$400 from said Bennington on account of the resignation of said J. H. Schively as aforesaid; and whether said J. H. Schively, while serving as president and trustee of said corporation as aforesaid, and during the period of

time aforesaid, received from said corporation as compensation for his services the total sum of \$2,597.35; and the said witness, J. H. Schively, did then and there, before said grand jury, organized as aforesaid, after being duly sworn by the foreman thereof as aforesaid, in the matter of said investigation, wilfully, unlawfully, feloniously, falsely, corruptly and knowingly and contrary to said oath, depose, testify and swear as true among other things in substance and to the effect following, that is to say:

That he, the said witness, J. H. Schively, on or about the tenth day of July, 1906, at the time of his being elected president and trustee of said Pacific Livestock Association, a corporation, was employed by the trustees of said corporation upon the basis of a flat salary of \$400 per month, and that during the entire time of his connection with the said corporation as an officer thereof as aforesaid, that is to say, from the tenth day of July, 1906, to the eighth day of October, 1906, he received no compensation whatsoever from said corporation by reason of his being an officer thereof, or by reason of any services rendered said corporation as an officer thereof or at all, except said flat salary of \$400 per month; that he had no agreement, contract or understanding with said E. R. Ward, or with said E. R. Ward and the other trustees of said corporation or any of them, prior to or at the time of his becoming an officer of said corporation, or at any time that said E. R. Ward, in consideration of the sum of \$1,200, or any sum whatsoever, paid or agreed to be paid by said J. H. Schively to him, should resign as president and trustee of said corporation in favor of said J. H. Schively, and that he, the said J. H. Schively, through the influence or procurement of said E. R. Ward, or through the influence of said E. R. Ward and other trustees of said corporation, or any of them, succeed said Ward as president and trustee of said corporation; that said E. R. Ward did not, on or about the tenth day of July, 1906, or at any time, sell, transfer or assign to him, the said J. H. Schively, any interest, right or privilege in said corporation or to the revenue, commissions or mileage derived or to be derived from said corporation, or any part thereof; that he, the said J. H. Schively, did not, on or about the tenth day of July, 1906, or at any time, execute and deliver or cause to be executed and delivered to said Ward three certain promissory notes of \$400 each, payable in thirty, sixty and ninety days, or any notes whatsoever, in consideration of the resignation of said Ward as president and trustee of said corporation or in consideration of the transfer by said E. R. Ward to said J. H. Schively of his, the said Ward's, right to collect and receive any commissions or mileage on insurance written or to be written by or for said corporation; that he, the said J. H. Schively, while president and trustee of said corporation during the period of time aforesaid, did not collect, charge or receive any commissions or mileage upon insurance written or to be written by or for said corporation as compensation for his services as an officer of said corporation or for any reason whatsoever; that his, the said J. H. Schively's, account with said corporation while president and trustee thereof as aforesaid was not, by his per-

mission or consent or with his knowledge, charged with three items of \$400 each on account of the payment by said corporation for the use and benefit of said J. H. Schively out of moneys due and owing by said corporation to said J. H. Schively of said three promissory notes executed by said J. H. Schively in favor of said E. R. Ward and held by the Fidelity National Bank of Spokane; that he, the said J. H. Schively, did not know that during the time of his service as president and trustee of said corporation he or the duly authorized officers of said corporation or any person whatsoever, drew three certain checks for \$400 each upon the funds of said corporation, or upon the funds of said J. H. Schively held by said corporation, in favor of said E. R. Ward or in favor of the Fidelity National Bank of Spokane for the use and benefit of said Schively, and in payment of said three promissory notes of \$400 each; that he did not learn until he had examined the receiver's report long after he had severed his relations with said corporation as president and trustee thereof that said three checks of \$400 each had been drawn in payment of said three \$400 notes; and that he did not know at the time of the drawing of said checks, or at any time prior to his examination of said receiver's report, many months thereafter, that his account with the said corporation while president and trustee thereof had been charged with said checks; that he did not, during the time of his service as president and trustee of said corporation, or at any time, receive from said corporation, as commissions or mileage on insurance written by or for said corporation, the sum of \$1,815.60 or any sum whatsoever; that he did not, on or about the eighth of October, 1906, or any time, enter into any contract, agreement or understanding with one Bennington to resign as president and trustee of said corporation in favor of said Bennington, and use his influence in securing the election of said Bennington as a trustee of said corporation in consideration of the sum of \$400 or any sum whatsoever; and that he did not, at the time of his resignation as president and trustee of said corporation, or at any time, receive from said Bennington, directly or indirectly, the sum of \$400 in consideration of his, the said J. H. Schively's, resigning the office of president and trustee of said corporation, held by him as aforesaid, or for any purpose whatsoever; that he, the said J. H. Schively, did not at the time of his service as president and trustee of said corporation, or at any time, receive from said corporation as compensation for his services, or as commissions or mileage upon insurance written by or for said corporation, the sum of \$2,597.35, or any sum whatsoever greater than \$1,300, which last-mentioned sum he received as salary and expenses; that he, the said Schively, never realized any benefit whatsoever, directly or indirectly, by reason of the execution and delivery to said E. R. Ward of said three promissory notes of \$400 each, or from the payment of the same; and that his, the said J. H. Schively's election as president and trustee of said corporation was not due, directly or indirectly, to the execution and delivery of said notes to said E. R. Ward, or to the payment of the same, but was due solely to his

employment by other trustees of said corporation as a manager for said corporation at the stipulated salary of \$400 per month; that he, the said J. H. Schively, did not pay to said E. R. Ward for his, the said Ward's, position as president and trustee of said corporation, or for his, the said Ward's, commissions or mileage on insurance written or to be written by or for said corporation, any sum of money whatsoever; that he never saw said three promissory notes of \$400 each, payable in thirty, sixty and ninety days, to said E. R. Ward or his assigns; that immediately after he became president and trustee of said corporation, he, the said J. H. Schively, together with the other trustees of said corporation, waived all right and claim to compensation based upon commissions or mileage on insurance written or to be written by or for said corporation, and that he, together with the other trustees of said corporation, during the period of time aforesaid, went onto a flat salary basis of \$400 per month each.

WHEREAS, In truth and in fact, he, the said J. H. Schively well knew at the time of giving the testimony aforesaid before said grand jury as aforesaid that shortly before the tenth day of July, 1906, he, the said J. H. Schively, entered into an agreement and contract with said E. R. Ward, who was then and there president and trustee of said corporation; that for and in consideration of the sum of \$1,200, paid by said J. H. Schively to said E. R. Ward, the said E. R. Ward should resign as president and trustee of said corporation in favor of said J. H. Schively, and said E. R. Ward should use his influence with the other trustees of said corporation to procure the election of said J. H. Schively as president and trustee of said corporation in the place and stead of said E. R. Ward, with the same rights and privileges to commissions and mileage on insurance written and to be written by and for said corporation which had theretofore been enjoyed by said E. R. Ward; and that the said E. R. Ward then and there further agreed with said J. H. Schively that said sum of \$1,200 should be paid by said J. H. Schively to said E. R. Ward in three monthly installments of \$400 each, and that the said J. H. Schively, to secure the payment of said sum of money, should execute and deliver to said E. R. Ward his three promissory notes, payable in thirty, sixty, and ninety days, in the sum of \$400 each; and that on the tenth day of July, 1906, said agreement theretofore entered into between said J. H. Schively and said E. R. Ward was ratified and confirmed by the other trustees of said corporation; and that on said date said E. R. Ward did resign as president of said corporation in favor of said J. H. Schively and did then and there recommend and procure the election of said J. H. Schively as president and trustee of said corporation; and that said J. H. Schively, for and in consideration of the resignation of said E. R. Ward as aforesaid, and in consideration of the agreement between said J. H. Schively and said E. R. Ward, ratified and confirmed by the other trustees of said corporation as aforesaid, pursuant to which the said J. H. Schively should enjoy the same rights to commissions and mileage as had theretofore

been enjoyed by said E. R. Ward, executed and delivered to said E. R. Ward his three certain promissory notes for \$400 each, payable in thirty, sixty and ninety days; and that the said J. H. Schively on said tenth day of July, 1906, became and until the eighth day of October, 1906, remained president and trustee of said corporation solely and by virtue and by reason of his purchase of the offices, rights and privileges of the said E. R. Ward as aforesaid; and that at no time did he, the said J. H. Schively, receive as compensation for his services as an officer of said corporation the sum of \$400 per month, or any sum whatsoever, as salary, but the only compensation received by said J. H. Schively as such officer of said corporation was computed from month to month upon a basis of commissions and mileage upon insurance written and to be written by and for said corporation, and that the said J. H. Schively's account with said corporation while president and trustee as aforesaid was, by his permission and with his knowledge and consent, charged with three items of \$400 each on account of the payment by said corporation, for the use and benefit of said J. H. Schively, out of the moneys due and owing by said corporation to said J. H. Schively, of three promissory notes theretofore executed by said J. H. Schively in favor of the said E. R. Ward and held by the Fidelity National Bank of Spokane; and that, with the knowledge and consent and by the direction of the said J. H. Schively, during the period of time aforesaid, the duly authorized officers of said corporation used three certain checks for \$400 each upon the funds of said corporation and upon the funds of the said J. H. Schively held by said corporation in payment of his, the said J. H. Schively's, said three promissory notes; and that, with the knowledge and consent and by the direction of the said J. H. Schively, his account with said corporation was charged with said three checks from time to time as they were drawn; and that he, the said J. H. Schively, while president and trustee of said corporation as aforesaid, and during the period of time aforesaid, received from said corporation as commissions and mileage on the insurance written by and for said corporation the sum of \$1,815.60; and that he, the said J. H. Schively, on or about the eighth day of October, 1906, entered into a contract, agreement and understanding with one Bennington to resign as president and trustee of said corporation in favor of said Bennington, and to use his influence in procuring the election of said Bennington as a trustee of said corporation, and in consideration of the payment by said Bennington to him, the said J. H. Schively, of the sum of \$400; and that he, the said J. H. Schively, on or about the eighth day of October, 1906, did resign as president and trustee of said corporation and did procure and bring about the election of the said Bennington as trustee of said corporation for and in consideration of the sum of \$400 then and there paid by said Bennington to said J. H. Schively; and that he, the said J. H. Schively, was not, on the tenth day of July, 1906, or at any time, employed by the trustees of said corporation as manager thereof; and that the trustees of said corporation did not pay and did not agree

to pay to said J. H. Schively a salary of \$400 per month or any salary whatsoever; and that neither the said J. H. Schively nor the other trustees of said corporation during the time of service of said J. H. Schively as an officer thereof waive any right or claim to compensation based upon commissions or mileage on insurance written or to be written by or for said corporation, but that he, the said J. H. Schively, together with the other trustees of said corporation, during the period of time aforesaid, were compensated solely upon a basis of commissions and mileage computed upon insurance written and to be written by and for said corporation; and so the said witness, J. H. Schively, wilfully, unlawfully, feloniously, falsely, corruptly and knowingly, and contrary to his said oath taken as aforesaid in the manner and form aforesaid, did then and there commit the crime of perjury.

WHEREFORE, The said J. H. Schively, Insurance Commissioner of the State of Washington, was guilty of high crimes and misdemeanors, contrary to the Constitution and laws of the State of Washington.

#### ARTICLE XXVI.

That said J. H. Schively, as Insurance Commissioner of the State of Washington aforesaid, unmindful of the duties of his office and unmindful of his oath of office, has, since the thirteenth day of January, 1909, wilfully neglected his official duties, absented himself from his office for long periods of time without legal or sufficient cause, during which time he was not discharging his official duties, and during all of which time he was receiving his salary from the State of Washington as provided by law.

WHEREFORE, The said J. H. Schively, Insurance Commissioner of the State of Washington, was guilty of high crimes and misdemeanors, malfeasance in office, and conduct unbecoming a public official.

And the House of Representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any further articles, or other accusation or impeachment against the said J. H. Schively, and also of replying to his answers which he shall make to the said articles, or any of them, and of offering proof to all and every the aforesaid articles, and to all and every other articles, impeachment or accusation, which shall be exhibited by them as the case shall require, do demand that the said John H. Schively may be put to answer the said crimes and misdemeanors and malfeasance in office herein charged against him, and that such proceedings, examinations, trials and judgments may be thereupon had and given as are agreeable to law and justice.

(Signed) LEO. O. MEIGS,

*Speaker of the House of Representatives.*

Attest:

(Signed) LOREN GRINSTEAD,

*Clerk, House of Representatives.*

The president announced that the Senate will take proper order on the subject of the impeachment, of which due notice will be given the House of Representatives.

On motion of Senator Graves, the Senate organized itself as a court of impeachment for the purpose of hearing and trying the impeachment charges preferred against John H. Schively, insurance commissioner of the State of Washington.

The secretary called the roll, all senators being present except Senators Booth and Piper, and the following oath was administered to those present by Acting Chief Justice Fullerton:

I solemnly swear (or affirm) that in all things appertaining to the trial of the impeachment of John H. Schively, now pending, I will do impartial justice according to the constitution and the laws and according to the law and the evidence that may be produced before this body upon the hearing of such proceeding. So help me God.

Senator Bryan moved that John H. Schively be summoned to appear before the Senate forthwith.

Senator Nichols moved to amend that the time fixed in the summons for the appearance of John H. Schively before the Senate, sitting as a court of impeachment, be 10:30 tomorrow morning.

The amendment of Senator Nichols was accepted by Senator Bryan.

The motion of Senator Bryan as amended carried.

On motion of Senator Presby, the secretary was instructed to notify the House that the Senate, sitting as a court of impeachment, would receive the board of managers at 10:30 tomorrow morning.

On motion of Senator Cotterill, further proceedings under the articles of impeachment were set for 10:30 tomorrow morning.

SENATE CHAMBER,  
OLYMPIA, WASH., July 1, 1909.

At 10:30 a. m. the sergeant-at-arms announced that John H. Schively, with his counsel, was at the door of the Senate chamber.

On motion of Senator Presby, the Senate resolved itself into a court of impeachment.

The president called Senator Presby to the chair.

The chair instructed the secretary to notify the board of managers of the House that the Senate is ready to proceed with the impeachment proceedings.

John H. Schively, insurance commissioner of the State of Washington, accompanied by his counsel, Hon. Geo. C. Israel, appeared before the bar of the Senate.

Messrs. Managers Meigs, Sparks, Buchanan, Todd, Hubbell, Edge, Jackson (F. C.), Lambert and McGregor, constituting the board of managers of the House, accompanied by W. P. Bell, attorney general of the State of Washington, and George A. Lee, assistant attorney general of the State of Washington, appeared before the Senate, representing the complainants in the impeachment proceedings.

The secretary administered the following oath to the sergeant-at-arms of the Senate:

I, A. J. Ahola, sergeant-at-arms of the Senate, do solemnly swear that the return made by me upon the process issued on the 30th day of June, 1909, by the Senate against John Schively, was truly made and that I have performed such service as herein described. So help me God.

The sergeant-at-arms filed with the secretary of the Senate the following summons and return:

THE STATE OF WASHINGTON, SS.

*The State of Washington to John H. Schively, Greeting:*

WHEREAS, The House of Representatives of the State of Washington did on the 30th day of June, A. D. 1909, exhibit to the Senate articles of impeachment against you, the said John H. Schively, in the words following—

[For full text of articles of impeachment, see pp. 13-30.]

—And demand that you should be put to answer the accusations set forth in said articles, and that such proceedings, examinations, trials



and judgments might be thereupon had as are agreeable to law and justice;

Now, therefore, you, the said John H. Schively, are hereby summoned to be and appear before the Senate of the State of Washington, at the Senate chamber, in the city of Olympia, on the first day of July, 1909, at 10:30 a. m., then and there to answer the said articles of impeachment, and then and there to abide by, obey and perform such orders, directions and judgments as the Senate of the State of Washington shall make in the premises, according to the constitution and laws of the United States and of the State of Washington, and therein fail not.

WITNESS, the Honorable A. S. Ruth, president *pro tempore* of the Senate, at the city of Olympia, this 30th day of June, A. D. 1909.

WM. T. LAUBE, *Secretary of the Senate.*

THE STATE OF WASHINGTON, SS.

*The State of Washington, to A. J. Ahola, Greeting:*

You are hereby commanded to deliver to and leave with John H. Schively, if conveniently to be found, or, if not, to leave at his usual place of abode or at his usual place of business, in some conspicuous place, a true and attested copy of the within writ of summons, together with a like copy of this precept; and, in whichsoever way you perform the service, let it be done forthwith, before the appearance day mentioned in said writ of summons.

Fail not, and make return of this writ of summons and precept, with your proceedings thereon endorsed, on or before the appearance day mentioned in said writ of summons.

WITNESS, the Honorable A. S. Ruth, president *pro tempore* of the Senate, at the city of Olympia, this 30th day of June, A. D. 1909.

WM. T. LAUBE, *Secretary of the Senate.*

I, A. J. Ahola, sergeant-at-arms of the Senate, do solemnly swear that the return made by me upon the process issued on the thirtieth day of June, 1909, by the Senate against John H. Schively is truly made, and that I have performed such service as herein described. So help me God.

A. J. AHOLA.

Subscribed and sworn to before me this first day of July, A. D. 1909.

WM. T. LAUBE, *Secretary of the Senate.*

The following affidavits were filed by Geo. C. Israel, counsel for John H. Schively, and were read by the secretary:

BEFORE THE SENATE OF THE STATE OF WASHINGTON.

IN THE MATTER OF ARTICLES OF IMPEACHMENT EXHIBITED BY THE  
HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON IN  
THE NAME OF THEMSELVES AND ALL OF THE PEOPLE OF THE  
STATE OF WASHINGTON,

VS.

JOHN H. SCHIVELY, INSURANCE COMMISSIONER OF THE STATE OF  
WASHINGTON.

*To the Honorable President pro tempore of the Senate of the State of Washington, and to the Honorable Senate of the State of Washington Sitting as a High Court of Impeachment:*

Comes now John H. Schively, insurance commissioner of the State of Washington, and appearing in obedience to the summons herein, in person, as well as by his counsel, G. C. Israel, and not waiving his right to challenge the jurisdiction of this honorable court of his person as insurance commissioner of the State of Washington, or of the subject matter of the articles of impeachment exhibited in the said summons; and not waiving his right to challenge the right of various members of this honorable court to sit herein in the hearing of said articles of impeachment, by reason of his and their actual and implied bias; and not waiving his right to have the articles of impeachment herein made more definite and certain; and not waiving his right to have stricken from such articles of impeachment manifest extraneous, redundant, incompetent and immaterial matters therein contained; and not waiving his right to challenge the legal sufficiency under the law and the constitution of each and every of the articles of impeachment therein contained, now exhibits to this honorable court his motion in that behalf, and moves this honorable court that time, as of right he is entitled, be now granted him wherein to move, plead to, answer and make issue with the various articles of impeachment contained in the bill of impeachment herein, and to marshal his testimony and his witnesses for the purpose of his full and complete defense to each and to all of said articles; and in that behalf this defendant now moves this honorable court that he be granted a period of ninety days from and after this date wherein to make such preparation.

This motion is based upon the files and records herein and upon the affidavit herewith filed.

J. H. SCHIVELY,  
*State Insurance Commissioner.*

By G. C. ISRAEL,  
*His Attorney and Counsel.*

STATE OF WASHINGTON, COUNTY OF THURSTON, SS.

John H. Schively, being first duly sworn, deposes and says: I am the state insurance commissioner of the State of Washington, and the defendant against whom has been exhibited the articles of impeachment herein; that I am not ready for trial herein, and am informed and advised by my counsel that it will be impossible for me to be ready for trial herein for a period of at least from sixty to ninety days; and in that behalf I aver that the articles of impeachment herein, twenty-six in number, as exhibited in the summons herein, came into my possession at about the hour of six o'clock p. m. on the 30th day of June, 1909, and were by me placed in the possession of my counsel at about the hour of eight o'clock p. m. of said day.

That after the examination of said articles by my counsel, I was informed by my said counsel that he could not prepare the necessary answers thereto, should it be determined that I was required to answer to the merits, in less than ten days or two weeks' time, if he were to prepare the same so they would exhibit not only my denials thereto, but my affirmative pleas and defenses directed to the various articles contained in said exhibit of impeachment.

That I have heretofore fully and fairly revealed to my counsel all of the facts in connection with many of the matters and things contained in said articles of impeachment; but that there are contained therein many and other things which must be made for the first time a matter of discussion between us. That I am informed by my counsel that in order to prepare for the trial upon all of the articles of impeachment contained in said exhibit, that I will require, aside from the various witnesses whom I desire to produce that are residents of the state of Washington, many depositions from many persons and corporations resident and having main offices in many states of the Union, including New York, Texas, Massachusetts, Colorado, Illinois, Pennsylvania, Maryland and Michigan.

That I cannot compel by any process the attendance of such witnesses from such states at this trial, and can only obtain their testimony by letters rogatory and commission for depositions taken at such place of residence of such corporations at the convenience of such witnesses, and that in order to accomplish such depositions by such letters rogatory and commission, it will be necessary for me to have issued by this honorable court such letters to competent courts or officers in such jurisdictions empowering them to examine such witnesses upon interrogatories; and that all of such proceeding will consume a great amount of time, and that in the opinion of my counsel the same cannot be fully and satisfactorily taken inside of forty or sixty days from this date if the same were accomplished with all expediency.

That I am further advised by my counsel that I cannot safely proceed to trial upon the articles herein without such testimony at hand and produced at this hearing. That this motion is not made for delay, but in order that substantial justice may be accomplished and my

rights fully conserved herein, and in order that I may be fully protected in those rights and in the making of my defense herein.

Wherefore, the premises being considered, I pray the order of this honorable court as upon the motion of my counsel herein, and that I may be now granted a continuance herein for a period of ninety days for the purpose of preparing my defense to said articles. And further deponent sayeth not.

J. H. SCHIVELY.

Subscribed and sworn to before me this 1st day of July, 1909.

[SEAL.]

G. C. ISRAEL,

*Notary Public in and for the State of  
Washington, residing at Olympia.*

The president announced that he would hear Mr. Israel on the foregoing motion, and called the attention of the counsel on each side to rule 15, *i. e.*, that preliminary motions and interlocutory motions may be argued for not to exceed fifteen minutes. Mr. Israel spoke as follows:

I have noticed that rule, Your Honor, and I presumed that it would be honored more in the breach than in the observance, as it would be impossible to present any matter of any particular moment intelligently in fifteen minutes; but for the purposes of this motion I think I can keep within the rule, Your Honor, both in opening and closing.

As indicated in the affidavit and motion, it is impossible to prepare for this trial immediately or within any time measured by days or weeks; true we feel that it is the duty of this court to grant us reasonable time in which to move and meet and make issue with the various articles of impeachment, and that time should be at least ten days, because to any lawyer in this honorable body it is a known fact, without the necessity of proof, to meet what is in fact twenty-six indictments or twenty-six separate actions, means the preparation of twenty-six answers, both as to denials and to affirmative matter, and that in a matter of this importance, and with matters as general as they are stated in these articles of impeachment, he would not expect to prepare such issue that would be worthy of his efforts or the cause inside of ten days. If we were to ask this honorable court to simply extend us time to prepare and make issues we would yet again be compelled to then ask this court, and we think of right have granted to us, time to marshal our testimony. The very character of the articles of impeachment, twenty-four of them at least, or many of the twenty-four of them, indicate without the necessity of argument the fact that if any defense is to be made it must be made with the testimony of witnesses who are non-resident of this jurisdiction, witnesses who live in foreign states, as far away as Texas and New York, and, as is known to all lawyers in this honorable body, that can only be done by the issuance of commissions to take depositions or by the issuance of letters rogatory to various courts in those states. So, if we were to go hence

with a reasonable time in which to make issue, we would again have to apply to this honorable body for more time in which to marshal our testimony. So we have considered that it will be more convenient and less expensive that the court now grant us at one and the same time all the time that will be necessary for us to take up and begin the actual trial of this case and be prepared with our testimony, rather than to seek adjournment after adjournment to accomplish the same purpose and which would finally extend the delay over the same length of time.

This motion is honestly made. Any lawyer in the body, I think, will echo the statement that if such depositions are to be taken, and the defense necessitates the taking of such testimony, in such states, that such time is not unreasonable, and for all these reasons we ask this honorable court to grant this motion and allow us a reasonable extension of time as to the matters necessary to be gotten ready, rather than extensions of time from time to time as we may have to apply for them until we finally get to issue with replies to the matter. So we most respectfully urge Your Honor that the court grant us this extension.

Attorney General W. P. Bell, on behalf of the board of managers, made the following reply:

MR. PRESIDENT AND SENATORS: On behalf of the impeachment, we must certainly oppose this motion. We do not wish to seem unseemly or to urge great haste in this matter, but there is a way of doing things decently and in order, and it seems to me that the only way that this matter can be done decently and in order is to know what we are going to try before we commence to try it. The learned counsel insists that he should have an adjournment of ninety days; that at that time he will be ready with his witnesses; with his depositions, and ready for the trial; but what are we going to try? The learned counsel and the defendant may admit many of these charges and challenge the sufficiency of some of the charges. In their appearance here they have claimed the right to challenge the jurisdiction of this house to try this case; they challenge the jurisdiction, or the right, of some of the senators to sit in the trial of this case, and those things should be tried out. It seems to me and to the members of the managing committee that those things should be settled and fixed once for all, and then when the issues are joined and we know what there is to be tried, then is the time for them to come in and ask for an extension if they have not the testimony with them. They have made a general allegation, and they have not shown in any particular what they expect to prove by the absent witnesses. The rule in court is, when you ask for a continuance, you must state what you expect to prove by certain witnesses. They do not state what they expect to prove by certain witnesses—in fact they have not denied anything that the honorable House has alleged, and until they have denied something there is nothing to prove. Therefore we insist that this motion, at this point at least, should be

denied, and that the proceeding should be, as the members of the committee claim, that they should be required to answer within a certain time. We do not ask, as I say, undue haste, but within a reasonable time they should be required to answer; then the managers should be allowed a reasonable time thereafter to file a replication to this answer. Then we know exactly what is to be tried and then the Senate can give a reasonable time to the defendant within which to prepare and get ready for the trial.

In answer to a question from the president, the attorney general announced that, in his judgment, a week's time would be ample for the defendant to prepare his answer, and that three days would be a sufficient time for the managers to prepare a reply.

In answer to the president as to the time required to prepare an answer, Mr. Israel made the following statement:

I can't possibly prepare that answer, and I think Attorney General Bell knows the fact, in a week. I think the legislature knows the fact that it has taken Attorney General Bell's office, if the newspapers are to be believed, three weeks to prepare these articles of impeachment, and then they were not ready, and the answers are infinitely more difficult to prepare than the articles themselves. I could not attempt to make this answer within less than ten days or two weeks—two weeks at the outside, to be safe—and then I will have to come again with further applications for more time. Now, it was for the very purpose of avoiding technicalities at the expense of the State of Washington that we ask a lump in time. I will say to this honorable court now that if the time is granted in which to make all these preparations, that when the Senate convenes I will be here with every motion and every answer to the merits that is necessary—that we deem necessary—in this defense, to be taken up *seratim* without any delay and to final completion and settlement of the issues of the trial. But I would avoid the constant recessing and adjourning and meeting of this Senate when these preliminaries are being threshed out; I would have them all threshed out at the incoming of the Senate after the expiration of the continuance. It is extremely captious to my mind and extremely technical to invoke the proposition that no issue is yet joined here and consequently they do not know what will be admitted and what denied. I will say for the benefit of the counsel and the managers and for the benefit of this honorable court, that every article will be denied *in toto*, and that most of the articles will have to them an affirmative defense, if that will afford the gentleman any information, when the answer finally comes in this matter, if an answer ever comes. Of course if we are to be held down to technical rules and this honorable body wants to meet and adjourn and recess for a few days, and then meet again and adjourn and recess for a few days, and then meet again and adjourn and recess for a few days, I am content, with such ruling,

to take time of at least ten days in which to prepare the necessary motions and answers to these articles and then begin threshing them out; but I serve notice upon counsel and the managers now that after the issue is made I shall again ask reasonable time in which to take my depositions in the eastern states, and I think that it should weigh something with this Senate when I announce under my own motion and the affidavit of my client the intention to take such depositions—it should weigh for some honest purpose; and if it is necessary, and we deem it necessary, to take those depositions, I take it that this honorable court, the highest court that it is possible to create in the land, will not throttle us in the taking of those depositions, but will give us our letters rogatory, and whenever you give us our letters rogatory we all know that the interrogatories cannot be presented to a foreign tribunal and witnesses summoned and examined within two or three weeks. Now all those matters are under consideration at the time this motion is made for a general or lengthy recess, so all those things can be accomplished. I realize that, strictly following the rules of technical procedure, these matters come one at a time; and I also realize if they are to be presented one at a time that after the presentation of one comes further delay on the part of this honorable body to hear the next one. That is what I would have avoided; but if I am to be held down by this honorable court to the technical procedure, then I respectfully and earnestly ask Your Honor to have not less than ten days in which to prepare this answer. It is no easy task.

Senator Nichols moved that defendant Schively be given until Thursday, July 8, in which to answer the complaint.

Senator Cotterill moved as a substitute that defendant Schively be given until Saturday, July 10, to answer; that the board of managers be given until Wednesday, July 14, in which to reply, and that Wednesday, August 11, 1909, be set for the trial of the impeachment proceedings against defendant, John H. Schively.

The secretary called the roll on the substitute motion proposed by Senator Cotterill, and it carried by the following vote:

Voting aye: Senators Allen, Bassett, Blair, Bryan, Cameron, Cotterill, Eastham, Graves, Hutchinson, Huxtable, Knickerbocker, McGowan, Minkler, Nichols, Paulhamus, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stewart, Whitney, Williams, Mr. President—26.

Voting nay: Senators Anderson, Arrasmith, Brown, Cox, Davis, Falconer, Fatland, Fishback, Kline, McGregor, Metcalf, Myers, Polson, Stevenson—14.

Absent or not voting: Senators Piper, Booth—2.

The president resumed the chair.

At 11:45 p. m., on motion of Senator Graves a recess was taken until 2 o'clock this afternoon.

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### AFTERNOON SESSION.

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The Senate, sitting as a court of impeachment, reconvened at 2 o'clock p. m., Senator Presby in the chair, defendant Schively being present with his counsel, Hon. Geo. C. Israel.

Senator Graves moved that when the defendant has prepared his answer he shall file a copy of same with the attorney general and a copy with the secretary of the Senate, and the attorney general shall file with the secretary a copy of his reply and also serve a copy of his reply on the counsel for the defendant, Schively.

The secretary called the roll and the above motion was carried by the following vote:

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Graves, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Nichols, Paulhamus, Polson, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Williams, Mr. President—39.

Absent or not voting: Senators Booth, Piper, Whitney—3.

At his request, Hon. Geo. C. Israel, counsel for defendant Schively, was furnished with a certified copy of the articles of impeachment.

With the approval of the attorney general, Mr. Israel, counsel for defendant, proposed the following amendments to the rules governing the conduct of the impeachment proceedings, which were read by the secretary:

Letters rogatory or commissions to take depositions outside of the State of Washington shall be granted to either the managers and their counsel or the respondent, but in order to accomplish such letters rogatory or commissions to take deposition it shall be necessary for the party proposing the issuance of the same to serve upon opposite counsel a list of proposed interrogatories, together with notice that application for issuance of letters or commission will be made at a time therein mentioned to the president *pro tempore*, which time shall be not less than three days. At the time of application mentioned in such notice the party upon whom such interrogatories have been served shall present to the president his cross-interrogatories, and at such time the



president *pro tempore* shall, through the secretary, attach such interrogatories and cross-interrogatories, if any are then presented, to the letters rogatory or commission to take deposition, and the secretary shall forthwith transmit the same to the person or court before whom the witness is to be interrogated, with request and instruction that the same when fully answered be properly certified and returned, sealed, to the secretary of this court. Such proposed interrogatories and such depositions shall be taken within such period as to permit the same being returned to the secretary of this court on or before the conclusion of the testimony in chief of the party applying for and taking the same; otherwise the same will not be considered in evidence in this court.

The form of the letters rogatory shall be substantially as follows:

"IN THE SENATE OF WASHINGTON, SITTING AS A HIGH COURT  
OF IMPEACHMENT.

"THE HOUSE OF REPRESENTATIVES, for and on behalf themselves  
and of all of the People of the State of Washington,

*Complainant,*

vs.

"JOHN H. SCHIVELY, Insurance Commissioner of the State of  
Washington,

*Respondent.*

"To the Honorable (name of court to which letters rogatory are to go),  
and to the Honorable Judge thereof:

"Know ye, that the Senate of the State of Washington, sitting as a high court of impeachment, for the purpose of the trial of articles of impeachment by the House of Representatives of the State of Washington against John H. Schively, insurance commissioner of the State of Washington, have granted unto ..... permission to take the evidence of and interrogate one ....., a resident of (here insert residence address of witness) at the city of ....., in the State of ....., his answers to be used as evidence on behalf of the said ..... in such trial.

"That Your Honor is most respectfully requested that the process of its court may be had through its clerk and proper officers, for the summoning of said witness before said court, and the taking before said court of his answers to interrogatories and cross-interrogatories hereunto attached, and that when the same are answered under oath, as required by the laws of your jurisdiction in the administration of oaths to witnesses, that the same may be certified under seal of your honorable court to this court, and to ....., the secretary thereof, at Olympia, Thurston county, State of Washington, after having been first fully sealed by your honorable court.

"WITNESS, The Honorable A. S. Ruth, president *pro tempore* of the Senate of the State of Washington.

.....  
Secretary."

That in the issuance of commissions to take testimony the form as now used by the superior courts of the State of Washington in the issuance of commissions to notaries public and commissioners in foreign jurisdictions shall be adopted, used and followed, and depositions so taken certified by the officer taking the same substantially as required by the laws of the State of Washington in that behalf and returned sealed to the secretary of this court.

Senator Graves moved the adoption of the foregoing amendments to the rules.

The secretary called the roll and they were adopted by the following vote:

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Graves, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Nichols, Paulhamus, Polson, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Whitney, Williams, Mr. President—40.

Absent or not voting: Senators Booth, Piper—2.

A request was made by Mr. Israel that the stenographer be instructed to furnish daily to the defendant a transcript of the evidence taken.

The chair announced that the matter would be taken up at such time as evidence was submitted to the court in the impeachment trial.

At 2:25 p. m., the court of impeachment took a recess until Wednesday, August 11, 1909, at 2 o'clock p. m.

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SENATE CHAMBER,  
OLYMPIA, WASH., July 2, 1909.

During the morning session of the Senate, Senator Falconer moved to amend rule 19 of the impeachment rules as follows:

Add after the word "counsel" the words "upon a showing in general terms that the subpœnas are for necessary and material witnesses."

The secretary called the roll, and the amendment to Rule No. 19 was adopted by the following vote:

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, Metcalf, Myers, Minkler, Nichols, Paulhamus, Polson, Presby, Roberts, Rydstrom,

Smith, Stevenson, Stewart, Whitney, Mr. President—33.

Absent or not voting: Senators Booth, Cotterill, Graves, McGowan, Piper, Potts, Rosenhaupt, Smithson, Williams—9.

Also the following message was received:

HOUSE OF REPRESENTATIVES,  
OLYMPIA, WASH., July 2, 1909.

MR. PRESIDENT:

The House has appointed in lieu of its former board of managers for the impeachment proceedings against J. H. Schively, Messrs. Meigs, Edge and Sparks.

LOREN GRINSTEAD, *Chief Clerk.*

SENATE CHAMBER,  
OLYMPIA, WASH., July 10, 1909.

The following answer of the respondent was this day filed with the secretary of the Senate:

*In the Senate of the State of Washington Sitting as a High Court of Impeachment.*

THE HOUSE OF REPRESENTATIVES OF THE STATE  
OF WASHINGTON, in the name of Them-  
selves and of all of the People of the State  
of Washington,

*Complainants,*

vs.

JOHN H. SCHIVELY, Insurance Commissioner  
of the State of Washington,

*Respondent.*

ANSWER.

Comes now the above named John H. Schively, respondent herein, and for answer to the articles of impeachment herein, exhibited by the House of Representatives of the State of Washington, and for the purpose of questioning the sufficiency of the facts alleged therein as cause for impeachment, and for the purpose of exhibiting in this answer his each and every objection both as questions of law and fact thereto, as in that behalf he is required by section 20 of the rules of procedure and practice in the Senate while sitting on the trial of impeachment, as heretofore adopted, does now object to, except to, challenge, admit, deny, and affirmatively allege as follows:

# I.

The respondent objects and excepts to the sitting herein as a member of this court of one W. H. Paulhamus, senator-elect from the

twenty-fifth senatorial district of the State of Washington, and by virtue of his said office a member of this court, and who purposes to sit as a member thereof in the trial of this respondent, and to determine therein both the questions of law and fact to be therein determined, and as well the guilt or innocence of this respondent as to the matters and things charged in said articles of impeachment, for the reason that the said Paulhamus, as a member of this honorable court and tribunal, is disqualified from such membership by reason of his bias and prejudice and personal enmity towards this respondent, in this: That heretofore the said Paulhamus, as such senator, at the regular session of the legislature of the State of Washington, begun and held on the 11th day of January, 1909, did join in a report to the Senate of said legislature recommending the investigation and examination of the affairs of this respondent's office, and as well those of the insurance department of the State of Washington for past years.

That thereafter, and after the filing of the report of a certain committee of investigation that grew out of such resolution, the said Paulhamus did on or about Saturday, the 12th day of June, 1909, at Puyallup, in the county of Pierce, State of Washington, while discussing the calling of the extraordinary session of the legislature of the State of Washington, out of which these articles of impeachment grew, and while discussing the said report in so far as it related to this respondent, say among other things of and concerning this respondent, as follows, to-wit: "If the public sentiment I have met with is the same elsewhere, the Schively incident should be closed within twenty-four hours after two o'clock of the afternoon of June twenty-third. It is my belief there will not be a single vote in either the House or the Senate for the retention of Schively in his present position. \* \* \* I have failed to find a single person who does not believe Mr. Schively is absolutely guilty and should be removed from office." And that the said statements by the said Paulhamus were of and concerning the guilt or innocence of this respondent of the matters and things now charged herein against him in these articles of impeachment, and at said time a matter of the charges against this respondent in the report of the said investigating committee to the governor of the State of Washington.

That the said Paulhamus from thence until the present time has many times expressed his abiding conviction of the guilt of this respondent as to matters and things charged in said articles of impeachment, both in debate in the Senate of the State of Washington and in and about the corridors of the state house of the State of Washington, and in the public places of the cities of Olympia and Tacoma; and that the said Paulhamus has pre-judged the guilt or innocence of this respondent, and expressed his conviction of his guilt, and exhibited actual bias and prejudice and personal enmity towards this respondent, and that the said Paulhamus cannot sit in this honorable court as a fair and impartial judge or member of jury to pass upon any question

of law or fact that must be decided by the members of this honorable court, or act as a fair or impartial judge or juror herein.

And to these facts, should the same be controverted or denied, this respondent stands at the bar of this tribunal with his proofs in that behalf, for their full and complete establishment, and asks of this honorable court that should such averments of pre-judgment, prejudice, bias and personal enmity be so controverted, that he be now permitted before further proceeding of the trial of this matter to produce said proof and be heard, and that thereafter and in every event the said Paulhamus be by this honorable court excluded and excused from any participation in the trial of the articles of impeachment herein by reason of his said pre-judgment, bias, prejudice and personal enmity as aforesaid.

## II.

The respondent objects and excepts to the sitting herein as a member of this court of one P. L. Allen, senator-elect from the thirty-third senatorial district of the State of Washington, and by virtue of his said office a member of this court, and who purposes to sit as a member thereof in the trial of this respondent, and to determine therein both the questions of law and fact to be therein determined, and as well the guilt or innocence of this respondent as to the matters and things charged in said articles of impeachment, for the reason that said Allen, as a member of this honorable court and tribunal, is disqualified from such membership by reason of his bias, prejudice and personal enmity towards this respondent, in this: That heretofore, on March 11, 1909, the legislature of the State of Washington adopted House concurrent resolution No. 16, authorizing the appointment of a legislative investigating committee for the purpose of investigating certain state offices, including that of the secretary of state and the insurance commissioner of the State of Washington, and according to said resolution the president of the Senate of the State of Washington and the speaker of the House thereof did appoint a committee to be constituted as an investigating committee, and which consisted of five members, one of whom was the said Allen; and that thereafter the said committee and the said Allen, as chairman thereof, did proceed to the investigation of the insurance department in the office of the secretary of state, as the same was constituted by law prior to the 13th day of January, 1909, and of the office of the state insurance commissioner after said date, which was then and is now held by your respondent; and the said Allen, as a member of said committee, did join with the said committee in a report to the Honorable M. E. Hay, governor of the State of Washington, of the findings of said legislative investigating committee concerning the department of the secretary of state and insurance commissioner of the State of Washington, and did incorporate in said findings eighteen purported findings of fact, together with one conclusion by them deduced therefrom, all of which more fully appears from a copy of said report which is attached to

this answer and marked "Exhibit A," and now made a part of this objection and exception, and now referred to in connection therewith and to be considered therewith, and from the said findings did conclude and report to the said governor, among other things, that he found that this respondent had been guilty of wrongful, arbitrary and unwarranted conduct, and such as was not only highly reprehensible but extremely injurious to the interests of the insuring public of this state, and that by his gross neglect of official duties he had caused insolvent, irresponsible and fraudulent companies to flourish and prosper for a time; and that he had failed to perform the duties imposed upon him by the insurance laws, and that he had been shown to be incompetent and inefficient, and had brought the insurance department of the State of Washington into great disrepute, both in this state and abroad; and that he had wrongfully collected excessive fees, and that by his conduct had branded himself as a corrupt and unworthy public official.

And the said Allen did by the said report and by his conclusions therein express to the said governor that he had determined in his own mind and to his own satisfaction that this respondent was and had been guilty of malfeasance and misfeasance in office, and did exhibit therein a condition of mind greatly biased and prejudiced against this respondent, and an enmity towards and to him; and that all the matters and things so set forth in the said findings, from which the said conclusion was so announced by the said Allen, are the identical matters and things set forth in the articles of impeachment herein by the House of Representatives aforesaid as high crimes, misdemeanors and malfeasance in office, as to the guilt or innocence of which it is proposed by the said trial by this court that this respondent shall now be adjudged guilty or innocent, each of the said findings of fact as aforesaid in said report being the basis of an article of impeachment in the articles of impeachment here exhibited for the answer and trial of this respondent as to his guilt or innocence.

That the said Allen from thence until the present time has many times expressed his abiding conviction of the guilt of this respondent as to the matters and things charged in said articles of impeachment, and that the said Allen has pre-judged the guilt or innocence of this respondent in relation thereto, has expressed his conviction of the respondent's guilt, and exhibited actual bias and prejudice and personal enmity towards this respondent, and that the said Allen cannot sit in this honorable court as a fair and impartial judge or member of jury to pass upon any of the questions of law or fact that must be decided by the members of this honorable court in passing upon each of said articles of impeachment, and cannot sit as a fair or impartial judge or juror herein, but will, if permitted to sit for the trial of respondent herein, take with him in said trial such bias, prejudice, enmity, opinion and pre-judgment to abide with him during the trial irrespective of the evidence, and to influence him and guide his judgment in his final vote

upon the guilt or innocence of this respondent, should such vote be required during the trial herein.

And to these facts, should the same be controverted or denied, this respondent stands at the bar of this tribunal with his proofs in that behalf, for their full and complete establishment, and asks of this honorable court that should such averments of pre-judgment, prejudice, bias and personal enmity be so controverted, that he be now permitted before further proceeding in the trial of this matter to produce said proofs and be heard, and that thereafter and in every event the said Allen be by this honorable court excluded and excused from any participation in the trial of the articles of impeachment herein, by reason of his said pre-judgment, bias, prejudice and personal enmity as aforesaid.

### III.

The respondent objects and excepts to the sitting herein as a member of this court of one H. O. Fishback, senator-elect from the twentieth senatorial district of the State of Washington, and by virtue of his said office a member of this court, and who purposes to sit as a member thereof in the trial of this respondent, and to determine therein both the questions of law and fact to be therein determined, and as well the guilt or innocence of this respondent as to the matters and things charged in said articles of impeachment, for the reason that said Fishback, as a member of this honorable court and tribunal, is disqualified from such membership by reason of his bias, prejudice and personal enmity towards this respondent, in this: That heretofore, on March 11, 1909, the legislature of the State of Washington adopted House concurrent resolution No. 16, authorizing the appointment of a legislative investigating committee for the purpose of investigating certain state offices, including that of the secretary of state and insurance commissioner of the State of Washington, and according to said resolution the president of the Senate of the State of Washington and the speaker of the House thereof did appoint a committee to be constituted as an investigating committee, and which consisted of five members, one of whom was the said Fishback; and that thereafter the said committee and the said Fishback, as a member thereof, did proceed to the investigation of the insurance department in the office of the secretary of state, as the same was constituted by law prior to the 13th day of January, 1909, and of the office of the state insurance commissioner after said date, which was then and is now held by your respondent; and the said Fishback, as a member of said committee, did join with the said committee in a report to the Honorable M. E. Hay, governor of the State of Washington, of the findings of said legislative investigating committee concerning the department of the secretary of state and insurance commissioner of the State of Washington, and did incorporate in said findings eighteen purported findings of fact, together with one conclusion by them deduced therefrom, all of which more fully appears from a copy of said report which is attached to this

answer and marked "Exhibit A," and now made a part of this objection and exception, and now referred to in connection therewith and to be considered therewith, and from the said findings did conclude and report to the said governor, among other things, that he found that this respondent had been guilty of wrongful, arbitrary and unwarranted conduct, and such as was not only highly reprehensible, but extremely injurious to the interests of the insuring public of this state, and that by his gross neglect of official duties he had caused insolvent, irresponsible and fraudulent companies to flourish and prosper for a time; and that he had failed to perform the duties imposed upon him by the insurance laws, and that he had been shown to be incompetent and inefficient, and had brought the insurance department of the State of Washington into great disrepute, both in this state and abroad; and that he had wrongfully collected excessive fees, and that by his conduct he had branded himself as a corrupt and unworthy public official.

And the said Fishback did by the said report and by his conclusions therein express to the said governor that he had determined in his own mind and to his own satisfaction that this respondent was and had been guilty of malfeasance and misfeasance in office, and did exhibit therein a condition of mind greatly biased and prejudiced against this respondent, and an enmity towards and to him; and that all the matters and things so set forth in the said findings, from which the said conclusion was so announced by the said Fishback, are the identical matters and things set forth in the articles of impeachment herein by the House of Representatives aforesaid, as high crimes, misdemeanors and malfeasance in office, as to the guilt or innocence of which it is proposed by the said trial by this court that this respondent shall now be adjudged guilty or innocent, each of the said findings of fact as aforesaid in said report being the basis of an article of impeachment in the articles of impeachment here exhibited for the answer and trial of this respondent as to his guilt or innocence.

That the said Fishback from thence until the present time has many times expressed his abiding conviction of the guilt of this respondent as to the matters and things charged in said articles of impeachment, and that the said Fishback has pre-judged the guilt or innocence of this respondent in relation thereto, has expressed his conviction of the respondent's guilt, and exhibited actual bias and prejudice and personal enmity towards this respondent, and that the said Fishback cannot sit in this honorable court as a fair and impartial judge or member of jury to pass upon any of the questions of law or fact that must be decided by the members of this honorable court in passing upon each of said articles of impeachment, and cannot sit as a fair or impartial judge or juror herein, but will, if permitted to sit for the trial of respondent herein, take with him in said trial such bias, prejudice, enmity, opinion and pre-judgment to abide with him during the trial irrespective of the evidence, and to influence him and guide his judgment in his final vote upon the guilt or inno-



cence of this respondent, should such vote be required during the trial herein.

And to these facts, should the same be controverted or denied, this respondent stands at the bar of this tribunal with his proofs in that behalf, for their full and complete establishment, and asks of this honorable court that should such averments of pre-judgment, prejudice, bias and personal enmity be so controverted, that he be now permitted before further proceeding in the trial of this matter to produce said proofs and be heard, and that thereafter and in every event the said Fishback be by this honorable court excluded and excused from any participation in the trial of the articles of impeachment herein, by reason of his pre-judgment, bias, prejudice and personal enmity as aforesaid.

#### IV.

The respondent further objects and excepts to the sitting herein as members of this court of each and all of the following named persons, to-wit: A. W. Anderson, senator-elect from the second senatorial district of the State of Washington; Joseph Arrasmith, senator-elect from the ninth senatorial district of the State of Washington; John L. Blair, senator-elect from the twenty-fourth senatorial district of the State of Washington; Ed. Brown, senator-elect from the forty-first senatorial district of the State of Washington; J. W. Bryan, senator-elect from the twenty-third senatorial district of the State of Washington; D. H. Cox, senator-elect from the twelfth senatorial district of the State of Washington; Evan C. Davis, senator-elect from the first senatorial district of the State of Washington; J. A. Falconer, senator-elect from the thirty-eighth senatorial district of the State of Washington; H. H. Fatland, senator-elect from the twenty-ninth senatorial district of the State of Washington; Peter McGregor, senator-elect from the eighth senatorial district of the State of Washington; Charles E. Myers, senator-elect from the fourteenth senatorial district of the State of Washington; Alex Polson, senator-elect from the twenty-first senatorial district of the State of Washington; John R. Stevenson, senator-elect from the tenth senatorial district of the State of Washington; and as well, P. L. Allen, senator-elect from the thirty-third senatorial district of the State of Washington; H. O. Fishback, senator-elect from the twentieth senatorial district of the State of Washington, and W. H. Paulhamus, senator-elect from the twenty-fifth senatorial district of the State of Washington, and who by virtue of their said offices are members of this honorable court, and who each proposes to sit as a member thereof in the trial of this respondent, and to determine therein both the questions of law and fact to be therein determined, and as well the guilt or innocence of this respondent as to the matters and things charged in said articles of impeachment, for the reason that each of said persons and all of said persons as members of this honorable court and tri-

bunal are disqualified from such membership or from any right to sit in judgment of law or fact therein by reason of his and each of his and all of their bias and prejudice and personal enmity towards this respondent, in this: That heretofore, on the 11th day of March, 1909, the legislature of the State of Washington, by House concurrent resolution number 16, did authorize the appointment of a legislative investigating committee for the purpose of investigating certain offices of the State of Washington, including the department of the secretary of state and insurance commissioner of the State of Washington, upon which said committee, by the president of the Senate and of the speaker of the House appointing and the Senate and House confirming, there was appointed Senator P. L. Allen, of King county; Senator H. O. Fishback, of Lewis county; Representative J. C. Hubbell, of Kittitas county; Representative Howard Taylor, of King county, and Representative W. C. McMaster, of King county.

That thereafter said committee convened in the capitol building at Olympia, Washington, and later did make a written report to the Honorable M. E. Hay, governor of the State of Washington, concerning their investigation of the said department of the secretary of state and insurance commissioner of the State of Washington, together with their purported findings of fact and conclusions in regard thereto, all of which is fully set forth in "Exhibit A," attached to this answer and to which reference is now had and the same made a part of this paragraph, exeption and objection of this answer.

That thereafter the said M. E. Hay, governor of the State of Washington, did issue his governor's message convening the legislature of the State of Washington in extraordinary session, and did on the 23rd day of June, 1909, deliver to said legislature, to-wit, to the Senate and House of Representatives thereof, his message wherein and whereby, among other things, he did report to said legislature of and concerning the said report of the said committee as follows, to-wit:

"The findings of that committee bring to light conditions repugnant to the best interests of the state, conditions that cannot longer be tolerated. They contain a serious indictment against the present insurance commissioner of this state and the former secretary of state. The evidence cited in these findings develops the fact that these officials were recreant to their duty, betrayed the trust placed in them and violated every consideration of honor and public obligation that should have regulated their conduct.

"Because of these revelations, one of these officials has resigned his office and the evidence that has been gathered brands the other as unfit to continue in a position of responsibility. There is no denial of the moral obliquity on the part of the accused official—merely the specious plea that the letter of the law has not been violated. In the face of the evidence adduced and the admission of the charges made, one course only appears open to the legislature, which is the removal from office

of the delinquent officer. There are two methods open to you by which this official may be removed:

"1. By impeachment proceedings.

"2. By abolishing the office.

"The power of impeachment, which is solely vested in the House of Representatives, is an extremely grave and serious responsibility, not lightly to be exercised or heedlessly invoked. But, when an occasion necessitating such procedure arises, it should be met with firmness, the interests of the individual should be submerged in the interests of the community and deaf ears turned to the sophistry of the corrupt. Such procedure has better application to a case where there are disputed questions of fact as to the guilt or innocence of the officer charged. The other method can be properly applied where the guilt is confessed as in this case.

"I recommend that you pursue one or the other of the above methods as you see fit and deem most advantageous.

"\* \* \* In the case before you for consideration the course for your honorable body to pursue is as well defined as black from white. The facts are before you. They have been gathered by a committee of your own creating, a committee composed of those who favored and those who opposed this investigation, and the report of that committee is the unanimous verdict of its members."

"All of which more fully appears from a copy of said governor's message hereto attached and marked "Exhibit B," and to which reference is now had and the same made a part of this objection and exception to said members of this honorable court sitting in the trial hereof, or in anywise participating in the determination of the guilt or innocence of this respondent.

That said report was received and read by the said persons above mentioned and named as members of the Senate of the State of Washington, and that thereby respondent avers the said M. E. Hay as governor of the State of Washington undertook to say and did say to said members that by the report of the said committee this respondent stood convicted without further trial of malfeasance and misfeasance, high crimes and misdemeanors in office, and should be forthwith and summarily removed from said office without further trial, and that said report should be accepted by said senators as complete proof of the guilt of this respondent of malfeasance, high crimes and misdemeanors; and that in pursuance of said message there was on the 24th day of June, 1909, introduced in the House of Representatives of said legislature a bill and act, commonly known as the Palmer bill, and whereby it was sought by the said House of Representatives to act in accord with the recommendations of said governor's message and to treat this respondent as convicted of high crimes and misdemeanors and malfeasance in office, and to summarily remove him from that office by the abolition of that office, all of which more fully appears from a copy of said bill which is hereunto attached, marked "Exhibit C," to which

reference is now had and the same made a part of this exception and objection.

That thereafter such proceedings were had in such House of Representatives that said Palmer bill was passed by a vote of 56 to 34, and immediately transmitted to the Senate of the said legislature, where the same was by the advice, motion and vote in that behalf of each and all of the said senators and persons above mentioned sought to be passed by the said Senate, and that each and all of said persons upon a vote in said Senate to indefinitely postpone said bill did vote against such indefinite postponement, and thereafter by their vote did cause said bill to be referred to the Committee on Public Morals of said Senate; and the bill having been so referred, the said House of Representatives from thence, to-wit, the 24th day of June, 1909, until the 30th day of June, 1909, failed to further proceed towards any consideration of the filing of articles of impeachment against this respondent, but did abate all action in that behalf between said dates; and until said time each and all of the said persons and senators above named, aided, counseled and advised by the said M. E. Hay, governor of the State of Washington, did seek by various means to win over from among the remaining senators in said Senate sufficient votes to accomplish the passing of said Palmer bill in the said Senate, and for such purpose did argue and advance the assertions and statements that it was unnecessary that this respondent be tried upon articles of impeachment, or that any articles of impeachment should be found; but that the respondent was guilty of malfeasance, high crimes and misdemeanors, and guilty of the matters and things reported in the said committee's report, and that he should be summarily removed without further trial, and had been sufficiently tried and stood convicted; and each and all of said persons above mentioned were at said time, have ever since been and are now so of the fixed opinion of the guilt of this respondent of the matters and things contained in said report of his guilt of malfeasance, high crimes and misdemeanors in office; and that in pursuance of their and each of their policies to pass the said Palmer bill and to abolish the office of said insurance commissioner, they each and all stated and agreed that the said proposed abolition was solely for the purpose of removing respondent from office and of treating him as guilty of the matters and things charged against him in these articles of impeachment without further trial; and they and each of them then, ever since and do now entertain such abiding conviction of the guilt of this respondent in that behalf.

That thereafter between said dates, and on Thursday the 24th day of June, 1909, each and all of said persons so above excepted and objected to, did meet in caucus in the office of the governor of the State of Washington, and did there discuss ways and means whereby other votes of senators in the State of Washington could be accomplished to the support of the said Palmer bill for the sole purpose of removing this respondent from such office by the abolition of the office, and for no other purpose.

And your respondent further avers that all of the matters and things contained in the said report of the said committee, and upon which each and all of the said parties did pre-judge, form and express an opinion as to the guilt of this respondent in relation thereto, are the matters and things and basis of each and all of the articles of impeachment formulated herein.

And your respondent further avers that no attempt was made to formulate the articles of impeachment herein until each and all of the said parties above objected and excepted to had determined the impossibility of passing in the said Senate the said Palmer bill, and had caused such information to be conveyed to said House of Representatives. And your respondent avers that by reason of the mental attitude of each and all of said persons and their acts as aforesaid, that each and all of them have pre-judged this respondent as to the matters and things exhibited against him in these articles of impeachment, and have not only formed but expressed an unqualified opinion as to the guilt of the respondent in that behalf, and that they do now entertain actual bias and prejudice and personal enmity towards this respondent; and that they and each of them cannot sit in this honorable court as fair and impartial judges or members of this court to pass upon any question of law or fact that must be decided by the members of this honorable court in relation to said articles of impeachment, or to act as fair or impartial judges or jurors herein; and that if each or any of said persons be permitted to sit in judgment herein of this respondent that he will then as to such person or persons be pre-judged and convicted without evidence thereunto.

And to these facts, should the same be controverted or denied, this respondent stands at the bar of this tribunal with his proofs in that behalf, for their full and complete establishment, and asks of this honorable court that should such averments of pre-judgment, prejudice, bias and personal enmity be so controverted, that he be now permitted before further proceeding in the trial of this matter to produce said proofs and be heard, and that thereafter and in every event each and all of said persons be by this honorable court excluded and excused as members thereof from any participation in the trial of the articles of impeachment herein by reason of said pre-judgment, actual bias, prejudice and personal enmity as aforesaid.

#### V.

And now this respondent's objections and exceptions to the various members of this honorable court further sitting herein for the trial of the matters and things contained in the articles of impeachment herein, and in participating in the making of any ruling or final judgment in connection therewith, being now fully determined and adjudged by this honorable court, your respondent, further answering to the said articles of impeachment and in the assertion of his rights thereunder as a matter of law, now moves this honorable court that there be

stricken from the articles of impeachment herein all of the same encompassed and contained in that part thereof known and designated therein as article twenty-five, for the following reasons and upon the following grounds:

1st. Because all of the matters and things therein alleged are matters and things foreign to and independent of the office of insurance commissioner of the State of Washington, and relate to and are allegations of matters in the private life of the respondent.

2nd. Because all of the matters and things therein set forth are the re-allegation of matters and things charged against this respondent by a grand jury of the superior court of the State of Washington for Spokane county by indictment, which indictment is now pending and for trial in the said court.

3rd. Because by reason of said facts the said superior court of the State of Washington for Spokane county ought not of right to be disturbed in its jurisdiction or trial of the matters and things in said indictment alleged, and in said paragraph set forth, and that said matters are for the purposes of this trial redundant and immaterial.

And your respondent in furtherance of this, his said motion to strike said twenty-fifth article, further avers that on the 4th day of June, 1909, in the superior court of the State of Washington for Spokane county, a grand jury of the said court did return unto said court an indictment against your respondent wherein and whereby your said respondent was charged with the crime of perjury; and that thereafter your respondent was arraigned in said court under said indictment and entered a plea of not guilty thereto, and that the said cause was thereafter set down for trial for the 15th day of June, 1909, and thereafter the trial of said cause was continued until the month of September, 1909, for the purpose of granting this respondent opportunity to be present at the extraordinary session of the legislature, out of which the articles of impeachment herein grew; and that said cause is now pending for trial in said superior court of the State of Washington for Spokane county, all of which more fully appears in the affidavit of E. C. Macdonald hereunto attached and marked "Exhibit C" and made a part of this answer, and to which reference is now had in support of this motion to strike; and your respondent avers that all of the matters and things set forth in said article twenty-five in the articles of impeachment herein are substantially a reproduction in exact language of all of the said indictment, and nothing more or less than a substantial copy of said indictment, all of which more fully appears by comparison of said article twenty-five and said indictment as set forth in said affidavit; and that justice demands that the said indictment as incorporated in said article twenty-five be permitted to be tried in the said superior court of the State of Washington for Spokane county without interference by this court and without prejudicing the rights of this respondent in that behalf and upon his plea of not guilty therein entered.

## VI.

And this honorable court having by its decision passed upon the respondent's motion to strike from the articles of impeachment herein the said article twenty-five, comes now your respondent and further answering to said articles of impeachment herein, and as a matter of law that he is entitled to have decided and passed upon by this honorable tribunal, says that he now demurs to the articles of impeachment herein, and to each and all of said articles, in manner and form and for the reason as follows, to-wit:

1. Respondent demurs to article I of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

2. Respondent demurs to article II of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

3. Respondent demurs to article III of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

4. Respondent demurs to article IV of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

5. Respondent demurs to article V of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any



issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

6. Respondent demurs to article VI of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

7. Respondent demurs to article VII of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

8. Respondent demurs to article VIII of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

9. Respondent demurs to article IX of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

10. Respondent demurs to article X of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any

issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

11. Respondent demurs to article XI of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

12. Respondent demurs to article XII of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

13. Respondent demurs to article XIII of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

14. Respondent demurs to article XIV of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

15. Respondent demurs to article XV of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any

issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

16. Respondent demurs to article XVI of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

17. Respondent demurs to article XVII of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

18. Respondent demurs to article XVIII of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of the respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

19. Respondent demurs to article XIX of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

20. Respondent demurs to article XX of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any

issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

21. Respondent demurs to article XXI of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

22. Respondent demurs to article XXII of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of

Washington prior to the filing of the articles of impeachment herein.

23. Respondent demurs to article XXIII of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

24. Respondent demurs to article XXIV of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

25. Respondent demurs to article XXVI of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of respondent.

(b) The facts stated in said article are insufficient to constitute any cause of action in this court against the respondent under the constitution and laws of the State of Washington.

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto.

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article.

Wherefore said demurrer being considered as to all and each of



said articles of impeachment so exhibited herein, save and except article XXV thereof, the respondent prays that he may be hence dismissed as to each and all of said articles without the necessity of being put to further issue in relation thereto, and by reason of their insufficiency in law as by said demurrers asserted.

And should this honorable court deem each and any or all of said demurrers to each and any or all of said articles not well taken in law and overrule the same, then this respondent, not waiving his rights thereunder to further assert such challenge to such sufficiency of each and all of said articles, and obeying yielding to the practice of procedure established by the rules of this honorable court for the purpose of making complete issue herein as of all matters of law and fact in his one first and only answer as by such rules required, does now further answer to the facts alleged in said various articles of impeachment, and answering the same does admit, deny and allege as follows, to-wit:

I.

This respondent answering article I of said articles of impeachment says that he admits that at all times since the 13th day of January, 1909, he has been and now is the duly elected, qualified and acting insurance commissioner of the State of Washington, and that for eight years last past before the said 13th day of January, 1909, and until said date, he was the duly appointed and acting deputy insurance commissioner of the State of Washington.

Respondent denies that, unmindful of the duties of his office, or otherwise, he did on the dates mentioned in said article, or otherwise or at all, conduct himself in a manner highly arbitrary, or arbitrary in any manner, or oppressive or unjust, or that he was guilty of extortion in violation of the constitution and the laws of the State of Washington, or of any extortion in any manner whatsoever. And that as to the remainder of said article I he denies the same and each and every allegation therein contained, and the whole thereof, save and except as such general denial is modified by affirmative matter hereinafter alleged in connection with and answer to said article I. And that as to said article I, the respondent pleads the general issue of not guilty thereto.

And respondent further avers that all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things com-

plained of in said article I, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

## II.

This respondent answering article II of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article II, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

## III.

This respondent answering article III of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of

state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article III, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### IV.

This respondent answering article IV of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article IV, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### V.

This respondent answering article V of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, manage-

ment and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article V, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### VI.

This respondent answering article VI of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article VI, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### VII.

This respondent answering article VII of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in an-

swer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article VII, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### VIII.

This respondent answering article VIII of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said articles; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article VIII, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

## IX.

This respondent answering article IX of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of State of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article IX, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

## X.

This respondent answering article X of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article X, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state,

as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

### XI.

This respondent answering article XI of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XI, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

### XII.

This respondent answering article XII of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said time this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and

*ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XII, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

### XIII.

This respondent answering article XIII of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam. H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XIII, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state, for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

### XIV.

This respondent answering article XIV of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state,



and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XIV, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

## XV.

This respondent answering article XV of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XV, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

## XVI.

This respondent answering article XVI of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of

state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XVI, if the same did occur and take place, where wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### XVII.

This respondent answering article XVII of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XVII, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### XVIII.

This respondent answering article XVIII of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred

and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XVIII, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### XIX.

This respondent answering article XIX of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office, that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XIX, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### XX.

This respondent answering article XX of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in an-

swer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XX, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### XXI.

This respondent answering article XXI of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XXI, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

## XXII.

This respondent answering article XXII of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XXII, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

## XXIII.

This respondent answering article XXIII of the said articles of impeachment says that he denies the same and each and every allegation therein contained and the whole thereof, save as the same may be modified by the affirmative allegations hereinafter contained in answer to said article; and that as to said article he tenders and pleads the general issue of not guilty, and avers:

That all of the matters and things therein complained of occurred and took place, if they did occur and take place, while the insurance department of the State of Washington was in the charge, management and control of one Sam H. Nichols, who was then and there secretary of state of the State of Washington, and by virtue of said office *ex-officio* insurance commissioner; and that during all of the said times this respondent was an employe in the office of the said secretary of state, and his only connection with the insurance department of said office that of such employe in charge of the same under the direction, control and order of the said Sam H. Nichols, secretary of state as aforesaid and *ex-officio* insurance commissioner as aforesaid. And that each and any and all of the things complained of in said article XXIII, if the same did occur and take place, were wholly by reason of the policy and departmental rules of the said office of the said secretary of state, as promulgated, made and determined by said secretary of state for the

management and operation of said insurance department and for the transaction of the business coming before said department by virtue of its existence and creation.

#### XXIV.

This respondent answering article XXIV of the articles of impeachment herein says that he admits that on the 10th of July, 1906, he was elected president of the Pacific Live Stock Association, of Spokane, Washington, and qualified for such office August 4, 1906; and this respondent admits that on November 5, 1906, he wrote a letter to W. T. Melvin, of Everett, Washington, in which he stated that said association was one of the most reliable and stable live stock associations in the state. But the respondent denies each and every other allegation in said article XXIV contained, and the whole of the remainder of said article and all of the same that is not so specifically admitted, and as to said article and the remainder thereof this respondent pleads the general issue of not guilty.

#### XXV.

This respondent answering article XXV of the articles of impeachment herein says that he denies the same and each and every allegation therein contained and the whole thereof, and that as to said article he pleads the general issue of not guilty.

#### XXVI.

This respondent answering article XXVI of the articles of impeachment herein says that he denies the same and each and every allegation therein contained and the whole thereof, and that as to said article he pleads the general issue of not guilty.

And this respondent for a further and affirmative defense to articles one to twenty-three, inclusive, of the said articles of impeachment herein, alleges:

#### I.

That on the 11th day of March, 1907, there was approved by the governor of the State of Washington an act of the legislature of said state creating the office of state insurance commissioner, and prescribing his duties and fixing his salary, and whereby it was provided that at the next succeeding general election there should be elected a state insurance commissioner, whose term of office should begin on Wednesday after the second Monday in January next after his election and continue for four years and until his successor was elected and qualified; and that thereafter said act of the legislature in due course became the law of the State of Washington, and at a regular general election held in the State of Washington, in November of 1908, your respondent was elected such state insurance commissioner, and in the due course of time appointed thereto, to-wit, the 13th day of January, 1909, qualified and entered upon the discharge of his duties as such officer, ever since has been and now is such officer.

## II.

That prior to the creation of said office and the election of your respondent thereto and the beginning of the term thereof, and his qualifying and entering upon the discharge of its duties, all of the matters and things relating to the duties of such office were the duties of the secretary of state of the State of Washington, who was *ex-officio* insurance commissioner.

## III.

That at all times prior to said 13th day of January, 1909, and while such office was held by such secretary of state as such *ex-officio* insurance commissioner, the said secretary of state had had sole charge of the administration of all of the affairs coming under such head and all insurance matters in the State of Washington in which the State of Washington was interested by law or legislative enactment or direction, and had solely provided all rules of conduct, departmental practice and matters of regulation of the administration of such affairs under the laws of the State of Washington as they then existed pertaining to the administration of the duties of insurance commissioner.

## IV.

That about January 16, 1901, and while one Sam H. Nichols was secretary of state and by virtue of his office *ex-officio* insurance commissioner, your respondent was by the said secretary of state employed to assist in the administration of the affairs of such insurance department, and made and constituted a deputy in that behalf, and from thence until the 13th day of January, 1909, occupied such position of deputy insurance commissioner as an employe of said secretary of state, and not otherwise was he in any manner connected, empowered or authorized as to any act of his in relation to such insurance department.

## V.

That after the election of your respondent to the office of state insurance commissioner, created as aforesaid, your respondent recognized and realized that many of the practices, rules of procedure and departmental rules made, established and enforced by the said Sam H. Nichols, as *ex-officio* insurance commissioner, were not, under your respondent's ideas, of a proper construction of the laws of the State of Washington in that behalf and in accordance with such laws, and especially as to the construction placed upon the law of the State of Washington then existing as to the examination of insurance companies for admission into the State of Washington. And your respondent alleges that all of the matters and things alleged in articles one to twenty-three inclusive of the articles of impeachment herein grow out of and are solely attributable to, if the same be true and truthful allegations of fact, the construction placed by the said secretary of state upon the then existing laws of the State of Washington, and under and by and with the advice of the then attorney general of the State of Washington as to the

powers of the said secretary of state as *ex-officio* insurance commissioner in administering the affairs of such department. And that your respondent so deeming and considering, after his said election to said newly created office of state insurance commissioner, and at the regular biennial session of the legislature of the State of Washington convened at Olympia in January, 1909, did actively urge and solicit the passage of laws by the said legislature in regulating and defining the duties of the office of state insurance commissioner for the sole purpose of obviating all criticisms theretofore urged against the department of insurance under the secretary of state, which have become the basis of the said articles of impeachment, one to twenty-three inclusive. And that the said legislature did at said session thereof pass what is now chapter 217 of the Session Laws of 1909, an act relating to the examination of insurance companies, and declaring an emergency, and which was House bill No. 401; and that by said act it is provided:

"SECTION 1. The expense of every examination or other investigation of the affairs of any insurance company doing business in the State of Washington, which the state insurance commissioner is by law authorized or required to investigate or examine, shall be paid by the insurance company so examined and at the time of said examination or within ten days thereafter. The state insurance commissioner, or any deputy or employe under him, in making such investigation or examination, shall be allowed only his actual expenses required by such examination and shall not charge any fee nor receive any compensation for such examination other than the salary allowed by law. All charges for making any examination or investigation shall be paid by the company examined upon the presentation by the insurance commissioner or his deputy or employe making such examination of an itemized and verified statement of such expense, together with vouchers covering such expenses. Whenever it shall be practicable the insurance commissioner, his actuary or deputy, shall so arrange the dates of examination of companies in the same localities as near together as may be, in order that such examinations may be made without unnecessary expense and the traveling and other expenses incurred in the examination of companies in any one locality, or at any one time, shall be distributed *pro rata* among the companies examined in said locality, or at one time. The insurance commissioner or his deputy or employe, as the case may be, upon making such examination or investigation, shall prepare duplicate copies setting forth the expenses involved in such examination, one copy to be given to the company so examined and one copy to be presented to the auditor of this state. The itemized and verified bill of expenses as provided for in this section shall direct the company investigated or examined to pay the amount specified in the itemized bill to the state treasurer. All moneys paid by said companies for the expense of examination, as provided by law, shall be paid into the state treasury and shall be converted into a special fund to be known as the insurance inspection fund, from which special fund shall be paid all bills for expense of examinations made. Upon the



presentation of vouchers properly signed by the insurance commissioner, to the state auditor, the state auditor is hereby authorized to draw his warrant against said fund in the same manner in which warrants are drawn for the payment of other bills. For the purpose of making said payments and authorizing the auditor to draw warrants upon said fund, all of the money paid into said fund is hereby appropriated for the purpose of paying the examination expenses as provided for in this act.

"SEC. 2. An emergency exists and this act shall take effect immediately."

And that moreover at said session of said legislature there was further enacted what is now chapter 142 of the Session Laws of 1909 of the State of Washington, an act relating to the business of life insurance, etc., and wherein by section 22 thereof there was incorporated in said act substantially all of the provisions of said chapter 217.

#### VI.

That your respondent during the formation and passage of said act, now chapter 217, and said section 22 of chapter 142, was active during the session of said legislature in accomplishing the passage of said acts, and especially as to declaring the manner of charging for the examination of companies; and in that behalf did prepare a draft of a bill substantially as enacted in said chapter 217, and did present the same to one George A. Lee, assistant attorney general of the State of Washington, with the request that he prepare a bill for presentation to said legislature along said lines, and that said Lee did comply with such request, and that your respondent took the bill so prepared by the said Lee to one James A. Miller, then a representative in said legislature from Whatcom county, and personally requested him to introduce the same in the House of Representatives, and who did so introduce the same, and that the same now is chapter 217 of the laws of the State of Washington. And your respondent avers that by the said bill the principle of pro rating charges, which was and is the object of criticism in acts of the said secretary of state and his construction of the then existing law, is declared.

That chapter 142 of the Session Laws of 1909 above referred to was known in the said legislature at the time of its introduction as the Bassett bill, and that said Bassett bill did not contain said section 22, and that your respondent, while the said bill was pending in the Senate of the said legislature, did prepare the draft of what is now section 22 thereof, and in so doing did revise said Bassett bill and write therein the said section 22, and the said section 22 did thereafter, by reason of said acts of this respondent primarily, become a part of said act.

#### VII.

Respondent further avers that all of the said acts above related on his part were for the sole purpose of removing the insurance depart-

ment of the State of Washington, in his hands as the duly elected insurance commissioner, from all question, cavil or suspicion as to the methods or practice of examination and admission of insurance companies in the State of Washington and charges of the office in relation thereto, and in order that the law should be definitely and explicitly stated, not only as to the manner of collection but as to the disbursement of moneys collected; and that upon your respondent entering into the discharge of his duties as such state insurance commissioner, and from thence to the present time, the said law has been literally and actually followed in each and every instance of each and every investigation of any and every insurance company examined or applying for admission in the State of Washington, and never at any time by your respondent; or any of his assistants or deputies, in the slightest particular departed therefrom.

#### VIII.

Your respondent further avers upon his information and belief that none of the said remedial acts of the legislature hereinbefore set forth could have been passed or would have become the law of the said State of Washington had it not been for his active and insistent representations to said legislature of 1909 in that behalf.

#### IX.

That it is not true that this respondent has brought the insurance department of the State of Washington into great disrepute both in this state and abroad, or that his practices have been wrongful in any manner, or that any of his acts brand him as a corrupt and unworthy public official; but on the contrary your respondent avers that never in the history of the State of Washington has the said insurance commissioner's office been in higher or greater repute both in the State of Washington and elsewhere with all insurance companies doing business in the State of Washington; and that said insurance companies have practically endorsed the said department as one of the best administered in any state of the Union, and that under the administration of your respondent since taking said office the revenues of said office have been increased so that at the ending of the first six months of your respondent's administration the same are over \$42,000 in excess of the entire earnings of such department during any complete year during its existence. And that at the present time the condition of the insurance companies operating in the State of Washington in relation to their reliability to the insuring public is better than the same ever was in the history of the State of Washington.

And your respondent avers that in the investigation of his said office by the committee, upon whose report the articles of impeachment herein were predicated, save and except articles 24, 25 and 26 thereof, the said committee critically examined all moneys received and disbursed in the insurance department of the State of Washington for the past nine years, both as the same was administered by the said Sam H.

Nichols with your respondent as a deputy under him and since your respondent's administration of such affairs, and that said committee found, and as your respondent is informed and believes, stated that all moneys to the smallest fraction have been fully accounted for to the State of Washington that have been received by said insurance department as the moneys of said state or due or payable to said state.

X.

That your respondent has not been guilty of any crime or misdemeanor or malfeasance in office, and that he has administered the same as an honest, efficient and upright person.

Wherefore he prays that the premises being considered, and his pleas herein considered, and his defense herein considered, that there be now returned herein and to all of the articles of impeachment herein, a verdict by this honorable court of not guilty as to each and every and all of said articles, and that he may be hence dismissed without day.

G. C. ISRAEL,

*Attorney for Respondent.*

STATE OF WASHINGTON, COUNTY OF THURSTON, ss.

J. H. Schively, being first duly sworn, deposes and says: I am the respondent named in the foregoing answer; I have heard the same read, and know the contents thereof and believe the same to be true.

J. H. SCHIVELY.

Subscribed and sworn to before me this 9th day of July, 1909.

G. C. ISRAEL,

*Notary Public in and for the State of  
Washington, residing at Olympia therein.*

EXHIBIT "A."

REPORT AND FINDINGS OF THE LEGISLATIVE INVESTIGATING COMMITTEE OF THE STATE OF WASHINGTON, AUTHORIZED BY HOUSE CONCURRENT RESOLUTION No. 16 (ADOPTED MARCH 11, 1909), CONCERNING THE DEPARTMENTS OF SECRETARY OF STATE AND INSURANCE COMMISSIONER OF THE STATE OF WASHINGTON.

*To Honorable M. E. Hay, Governor of the State of Washington:*

On March 11, 1909, the legislature of the State of Washington adopted House concurrent resolution No. 16, authorizing the appointment of a legislative investigating committee. In accordance with this resolution, the president of the Senate and the speaker of the House appointed the following members to constitute the investigating committee, which appointments were duly confirmed by the Senate and the House, viz:

Senator Pliny L. Allen, of King county;  
Senator H. O. Fishback, of Lewis county;  
Representative J. C. Hubbell, of Kittitas county;

Representative Howard Taylor, of King county;

Representative W. C. McMaster, of King county.

On April 14, 1909, the committee so appointed convened in the capitol building at Olympia, Washington, all members of the committee being present, Senator Pliny L. Allen presiding as chairman. By virtue of the authority given the committee under the resolution, clerical and stenographic assistance was selected as follows, viz:

Mr. Stewart E. Smith, of Seattle, official clerk, \$35 per week;

Mr. Chas. B. Eaton, of Seattle, official stenographer, \$10.00 per day during attendance upon sessions of the committee, and an allowance of \$2.50 per day for hotel bills and necessary traveling expenses between Seattle and Olympia, and 30 cents per folio for the original and six carbon copies of transcripts of proceedings.

Messrs. LeMaster & Cannon, of Spokane, and C. M. Williams & Co., of Seattle, were designated as expert accountants in case their services were required by the committee and satisfactory arrangements could be made as to their compensation.

Assistant Attorney General George A. Lee, of Spokane, appeared as counsel for the committee.

The committee decided to investigate the insurance department of the State of Washington, and notified Mr. J. H. Schively, insurance commissioner, of such decision. During the investigation of said department Mr. Schively appeared before the committee at its sessions in person and by his counsel, Mr. George C. Israel. Subpœnas were issued for the attendance of witnesses before the committee, and thereafter from time to time testimony was taken relating to the conduct, management and affairs of the insurance department. Affidavits and correspondence from various persons and insurance companies were read and considered, and sixteen witnesses appeared and gave testimony.

During the investigation the committee found it necessary to interrogate Mr. Sam H. Nichols, secretary of state, who appeared in person and by his counsel, Mr. J. W. Robinson, of Olympia.

On May 12, 1909, after a thorough and exhaustive investigation of the insurance department, the taking of testimony was concluded. From the record and transcript of evidence, a copy of which is herewith transmitted and made a part of this report, the committee makes the following findings and conclusions concerning the insurance department of the State of Washington, and office of the secretary of state:

1.

That Sam H. Nichols was secretary of state of the State of Washington from 1901 to 1909; was re-elected for the term 1909 to 1913, and that during the period 1901 to 1909 he was *ex-officio* insurance commissioner of this state.

2.

That J. H. Schively was deputy insurance commissioner of the State of Washington from 1901 to 1909; that he became insurance commis-

sioner of this state in 1909, having been elected for the term 1909 to 1913; that as deputy insurance commissioner he had the power to grant certificates of authority to insurance companies, or to revoke certificates, and had other general authority in the insurance department of the state.

## 3.

That Sam H. Nichols, *ex-officio* insurance commissioner, and J. H. Schively, as deputy insurance commissioner of the state, had the power and authority, under the law, to require in advance certain entrance fees from domestic and foreign insurance companies before issuing to such companies a certificate of authority to transact business in this state, which advance fees are as follows:

"For filing articles of incorporation, or certified copies of articles, or other certificates required by law, \$25; issuing certificates of authority, \$10; for filing annual statement of condition, \$10; for filing each annual statement of business transacted in this state, \$10; for filing any other paper, \$1; for furnishing copies of papers filed, twenty cents per folio; for certifying copies, \$1 each; each fire insurance agent, \$2; each life insurance agent, \$5: *Provided*, That all fees so collected shall be paid into the state treasury." (Pierce's Code, Secs. 5636 and 5649).

## 4.

That J. H. Schively, as deputy insurance commissioner of this state, almost invariably represented to insurance companies seeking admission to this state that the entrance fees were \$235 for each company, payable in advance; that the usual representation made by Mr. Schively, as such deputy insurance commissioner, was as follows: "The entrance fees are \$235, \$35 statutory entrance fees and \$200 for the verification and first report, all of which must be paid in advance"; that Mr. Schively, as deputy insurance commissioner, upon receiving this amount from the company seeking admission, issued a certificate of authority to transact business in this state; that a few companies were admitted on the payment of the \$35 statutory fee, after having made strenuous objection to paying the \$235 demanded; a few companies were admitted on the payment of advance fees of \$135 each, but that the great majority of companies admitted during the past eight years were compelled to and did pay to Mr. Schively, as such deputy insurance commissioner, for admission to do business in this state, advance fees of \$235 each; that in at least one case Mr. Schively demanded and received an entrance fee of \$335; that an inspection of the books of the insurance department discloses that in no case did the State of Washington receive from Mr. Schively, or the insurance department, more than the statutory fee of \$35 from any company admitted to do business in this state.

## 5.

That Mr. Schively, as deputy insurance commissioner, had no right or authority to demand and receive \$200 from any company for "verification and first report"; that it was, under the law, his duty, for

which the state paid him his salary, to satisfy himself that the insurance laws of this state had been fully complied with before admitting companies to transact business in this state; that when he had performed such duties and so satisfied himself, as the law required, he was authorized to demand and receive, on behalf of the State of Washington, an entrance fee of \$35 and nothing more.

## 6.

That no authority is found in the law for the collection of any but a \$35 entrance fee from any insurance company seeking a certificate to transact business in this state, and all fees collected by Mr. Schively, as deputy insurance commissioner, in excess of such statutory entrance fee of \$35 were demanded and collected by him wrongfully and wholly without warrant of law.

## 7.

It is impossible for this committee to accurately determine the total amount of fees so collected wrongfully and wholly without warrant of law by J. H. Schively, as deputy insurance commissioner, during the eight years of his term as such deputy, but from the evidence received from about one-fourth of the insurance companies transacting business in this state the committee finds that such fees so collected will aggregate several thousand dollars, and that Sam H. Nichols and J. H. Schively have been the beneficiaries of such fees.

## 8.

That J. H. Schively testified that the extra fee of \$200 not provided by statute was collected to insure the expenses which would be incurred in prospective and future examinations and to keep out what he designated as "wildcat insurance companies"; but the evidence before the committee shows that approximately five thousand dollars has been collected in the past five years from insurance companies which have never been examined, and Mr. Schively testified that no part of said sum so collected is now on hand, and that such sum or amount is carried in what Mr. Schively designated when before the committee as a "sliding account." In this connection the committee finds that Mr. Schively had ample protection under the law to insure his expenses incurred in the examination of any insurance company, and that it is and was unnecessary and wrongful to demand and receive an examination fee in advance; that the law provides as follows:

"SEC. 5622. *Expenses.* The expense of every examination or other investigation of the affairs of any organization, pursuant to the authority conferred by the provisions of this act, shall be borne and paid by the corporation so examined. No charge shall be made for any examination of an insurance organization except for necessary traveling and other actual expenses incurred.

"All charges for making an examination shall be presented in detail and shall be paid by the organization examined. Should payment be refused, the bill shall be approved by the commissioner, audited by the

state auditor and paid on his warrant drawn in the usual manner on the state treasurer to the person making the examination. The commissioner shall revoke the certificate of authority granted the company that refuses to pay the bill for expenses of examination and shall not again grant it certificate of authority until it has paid to the state treasurer the amount of such bill." (Pierce's Code, Sec. 5622).

That under this law it is necessarily implied that examination fees cannot be collected in advance; that under the law the deputy insurance commissioner was amply and fully protected, and therefore exceeded his authority in exacting wrongfully and illegally examination fees in advance. The committee also finds that the law gave the insurance department ample powers to keep out any "wildcat" or irresponsible insurance company without exacting any advance fee.

## 9.

The committee further finds that the insurance laws of this state authorize the insurance commissioner, or his deputy, to examine the business and affairs of every insurance company doing business in this state; that the expense of such examination when made shall be paid by the company examined; that no charge shall be made by the insurance commissioner, or his deputy, for any examination except for necessary traveling and other actual expenses incurred, and that all charges for making an examination shall be presented in detail to the company examined (Pierce's Code, Sec. 5622); that J. H. Schively testified before the committee, under oath, that he was familiar with this law governing the expenses of examining insurance companies; that notwithstanding his knowledge of this law and its injunction that only actual expenses may be charged and collected, the evidence before the committee shows Mr. Schively at no time, nor in any examination made while deputy insurance commissioner, presented a detailed statement of expenses to the company examined; that such action on his part was a flagrant violation of this law, which law is too plain to admit of misinterpretation or misconstruction.

## 10.

That in the past eight years Sam H. Nichols, as *ex-officio* insurance commissioner, and J. H. Schively, as deputy insurance commissioner, have collected several thousand dollars to cover expenses of prospective examinations, which examinations have never been made; that such amount was divided equally between them; that no part of said sum now remains, nor has it ever been kept as a trust fund for the companies advancing it, and that such collections were wrongfully and illegally made.

## 11.

That the testimony before the committee, undisputed by Mr. Schively, shows, and the committee finds, that Sam H. Nichols and J. H. Schively invariably charged a flat rate for examining an insurance company, which flat rate ranged from \$10 to \$200 for each com-

pany; that this flat rate was charged in direct contravention of the law, which authorizes the collection of nothing but actual expenses; that J. H. Schively testified that this flat rate was always placed high enough to cover expenses; that if there was any balance over expenses, as there undoubtedly was in most cases, such balance was divided equally with Sam H. Nichols, and his (Schively's) portion "was spent in any way that happened to occur to him"; that in several instances an examination charge of \$200 was made for a perfunctory examination occupying but a few hours; that in the case of Washington Hardware and Implement Dealers Mutual Fire Insurance Company, of Spokane, the examination by Mr. Schively, as deputy insurance commissioner, occupied less than one hour, consisting merely in receiving an accountant's report of the affairs of the company, and \$200 was demanded by Mr. Schively, no statement of expenses having been presented; on payment of that sum being refused, Mr. Schively accepted \$100 for the examination; that Mr. Schively testified before the committee that if an itemized statement of expenses had been requested it would have been given; that such conduct on the part of Mr. Schively was arbitrary and illegal.

## 12.

That on September 28, 1905, Sam H. Nichols, as *ex officio* insurance commissioner, and J. H. Schively, as deputy insurance commissioner, examined the affairs of the Masonic Mutual Accident Company, of Springfield, Massachusetts, as shown by affidavits of officers of the company furnished to the committee and attached to this record; that the total time spent by them in making such examination was less than one hour; that the examination was merely perfunctory and consisted of asking a few questions; that no statement of expenses was presented to the company as by law required; that Mr. Nichols and Mr. Schively demanded \$200 for said examination, which amount the officers of the company deemed excessive and refused to pay; that the company offered to pay \$50 for the brief examination; that Mr. Nichols and Mr. Schively threatened to revoke the license of the company to do business in this state if the two hundred-dollar charge was not paid; that three months later a request by said company to renew its license in this state was denied because of an indebtedness to the insurance department of \$200; that such action on the part of Mr. Nichols, as *ex officio* insurance commissioner, and Mr. Schively, as deputy insurance commissioner, was arbitrary, unwarranted and highly reprehensible, since they made no attempt to follow the law of this state and presented no statement of expenses incurred in making such examination; that this case shows that insurance companies were largely at the mercy of Mr. Nichols and Mr. Schively when arbitrary charges were demanded, and that the insuring public of the state, as well as the state itself, suffered by reason of such unwarranted conduct.



## 13.

That on August 17, 1906, J. H. Schively, as deputy Insurance commissioner, received from the Pacific Live Stock Association, of Spokane, two checks, one for \$100 and one for \$200, supposedly to cover examination charges; that the records of said association show that J. H. Schively was elected president of the Pacific Live Stock Association on July 10, 1906, and qualified as such on August 4, 1906; that he continued to act as president of the association until October 3, 1906; that during his term of office as such president he received from the association in salary and commissions over \$2,500; that during his connection with the association as president Mr. Schively was deputy insurance commissioner of the state, and received his regular salary as such deputy; that shortly after he resigned the presidency of said association, and on November 5, 1906, Mr. Schively, as deputy insurance commissioner, wrote the following letter to Mr. W. T. Melvin, of Everett, Washington:

"I think the Pacific Live Stock Association, with headquarters in the Fernwell Building, Spokane, is one of the most reliable and stable live stock associations in the state. I did not leave it because of any lack of confidence in its future, but because for personal reasons I thought it best to return to my desk in the insurance department. I received your letter while in Spokane and handed it to Mr. Walker. I think you will be safe in representing this association.

"Yours very truly,

"J. H. SCHIVELY,

*"Deputy Insurance Commissioner."*

That in September, 1907, the Pacific Live Stock Association was found to be insolvent and placed in the hands of a receiver.

From the foregoing facts, it seems to this committee that Mr. Schively's conduct in holding the office of deputy insurance commissioner, and at the same time acting as president of the Pacific Live Stock Association, receiving salary and commissions as such president, and also receiving \$300 while president as deputy insurance commissioner for official examinations as an officer of the State of Washington, was highly reprehensible, and shows him to be an unworthy official; that the foregoing facts and other evidence before the committee indicate to the committee that any insurance company, regardless of its responsibility or financial condition and standing, which would pay excessive examination charges to the deputy insurance commissioner, J. H. Schively, could and did receive the greatest consideration and highest recommendation from him as such deputy insurance commissioner of this state.

## 14.

The committee further finds that in April, 1907, J. H. Schively, as deputy insurance commissioner, received from the Walla Walla Fire Insurance Company, of Walla Walla, Washington, \$200 for examining the company, and again in July of the same year received \$200 to cover

an examination charge; that Mr. Schively did not present on either occasion to the officers of the company any statement of the expenses, and that the law was not complied with; that these charges made to the Walla Walla company seem to the committee to be unreasonable, arbitrary and excessive, and, following each other by such a short period of time, are difficult of explanation; that the company was later placed in the hands of a receiver; that this incident further confirms the conclusions of the committee expressed in the preceding paragraph of these findings, and is additional evidence of the reprehensible practices of J. H. Schively, as deputy insurance commissioner.

## 15

The committee further finds that any sums collected from any insurance company to cover examination charges in excess of actual expenses incurred in the examination were collected wrongfully and without warrant of law; that it is impossible for this committee to accurately determine the amount of excessive and illegal examination fees collected by J. H. Schively, as deputy insurance commissioner, from 1901 to 1908, since Mr. Schively testified that no statement of expenses was ever presented to an insurance company, nor was any record kept of such expenses, nor of the amount paid; that the total amount collected from insurance companies by J. H. Schively, as deputy insurance commissioner, in excess of actual expenses incurred in making the examinations, was unquestionably large; that several thousand dollars was collected by Mr. Schively for "official examination," which examinations have never been made; that the money so collected by Mr. Schively in his official capacity, received from insurance companies to cover future examinations, has, by Mr. Schively's own testimony, been spent and has not been kept as a trust fund of the companies advancing it; that the state has received no part of said sums; that such conduct on the part of J. H. Schively, as deputy insurance commissioner, was extremely wrongful and indicates to the committee that any company, whether responsible or irresponsible, could be admitted to the state to do business on payment to Mr. Schively of a \$35.00 statutory fee and an additional \$200 fee to cover a future examination or "verification and first report."

## 16

The committee further finds that J. H. Schively, as deputy insurance commissioner, has for a long time past demanded of and received from insurance companies a fee of \$2 for attaching to the annual published statement of the affairs of the company what Mr. Schively terms "the insurance commissioner's certificate of publication"; that the state has never received the fees so collected; that there is no authority in law for such arbitrary charge; that it is a source of income to the deputy insurance commissioner not contemplated by law, nor authorized either expressly or impliedly; that no record of the receipts from this source has been kept, and it is therefore impossible for the committee to ac-

curately determine the total amount received from this unauthorized and illegal source of revenue.

17.

The committee further finds that the insurance laws of this state require the insurance commissioner, or his deputy, to make a detailed examination of all local or domestic insurance companies "at least once a year" (Pierce's Code, Sec. 5623); that if the condition of the company warrants it, its license may be revoked; that this law is a salutary one and is for the benefit and protection of the insuring public; that if the law were followed, it would be difficult, if not impossible, for fraudulent, irresponsible and insolvent companies to exist; that J. H. Schively, deputy insurance commissioner, has failed to perform his duties under this law; that such neglect and failure has permitted insolvent companies to flourish and exist for a time at the expense of the insuring public; that Mr. Schively testified before the committee that his failure to examine local companies as the law requires was due to inadequate office assistance; that this excuse seems to the committee to be weak and unsatisfactory; that Mr. Schively's failure to observe this law has cost the people of this state thousands of dollars, which money has been received by insolvent and now defunct companies whose licenses should have been revoked after a proper examination by the insurance department.

18.

The committee further finds that Sam H. Nichols, on the 28th day of April, 1909, gave testimony before the committee concerning the insurance department of the secretary of state's office; that before the next meeting of the committee, Sam H. Nichols resigned as secretary of state of the State of Washington; that his successor was thereafter appointed and has qualified; that after Mr. Nichols' resignation the committee did not further pursue the investigation as to him.

The foregoing findings are based upon the evidence introduced before the committee, a transcript of which is herewith submitted, and upon these findings the committee makes the following conclusions:

I.

That for the eight years ending January 10, 1909, Sam H. Nichols was *ex-officio* insurance commissioner of the State of Washington; and during said time J. H. Schively was deputy insurance commissioner, and as such deputy insurance commissioner was for all of said time practically in full control of the insurance department of this state; that he issued and revoked licenses, and conducted and managed the entire department; that his wrongful, arbitrary and unwarranted conduct, as set forth in the above findings, was not only highly reprehensible, but extremely injurious to the interests of the insuring public in this state; that his gross neglect of official duties has caused insolvent, irresponsible and fraudulent companies to flourish and prosper for a time; that his failure to perform the duties imposed upon him by the insurance laws shows him to be incompetent and inefficient, and

has brought the insurance department of the State of Washington into great disrepute, both in this state and abroad; and that his practices in wrongfully collecting excessive fees and retaining them brands him as a corrupt and unworthy public official.

The committee further reports that in the investigation of the insurance department it has expended the following sums:

EXPENSES INCURRED BY COMMITTEE IN INVESTIGATING THE OFFICE  
OF INSURANCE COMMISSIONER.

Witness fees .....	\$297 51
Clerical services and stenographer.....	573 00
Per diem and expense of members.....	692 36
Miscellaneous expense .....	69 68
	<hr/> \$1,632 55

Respectfully submitted,

PLINY L. ALLEN, *Chairman*.

H. O. FISHBACK.

J. C. HUBBELL.

HOWARD TAYLOR.

W. C. McMASTER.

EXHIBIT "B."

*Gentlemen of the Senate and House of Representatives of the State of Washington:*

Since your adjournment on March 11th last, the State of Washington has sustained a severe loss in the death of Governor Samuel G. Cosgrove, who died at Paso Robles, California, Sunday morning, March 28th. Ill health after election gave Governor Cosgrove little opportunity to devote himself actively to the affairs of state, but we all know from the example he set as a citizen, the spotless record of his private life and his high ideals of the duties of an official as expressed in his public utterances, that, had he lived, he would have conducted his administration with an unselfish devotion to the general welfare, fearless in the performance of what he conceived to be right and courageous in the prosecution of wrong.

Fully aware of the confidence reposed in Governor Cosgrove by the people of Washington and the exceptional services they anticipated he would render to the state, it was with full appreciation of the grave responsibility thrust upon me by the provisions of our state constitution that I took the oath of office as governor on March 28th.

Just prior to the adjournment last March of the eleventh regular session of your honorable body you passed a resolution creating an investigating committee. This action was taken as a result of serious and alarming charges that had been made in open session upon the floor of the legislature, involving the integrity and official conduct of certain state officers. You clothed your committee with authority to "investigate the affairs, doings and conduct of such state officers and such departments of the state government as said committee shall deem

proper" and provided that it should "report the result of such investigation to the governor of this state on or before the 12th day of July, 1909."

At a meeting held in Seattle on June 2nd, your committee made a verbal report to the governor, informing him of the conditions it had found existing in some of our state offices and of the recommendations the written report would contain, also suggesting the advisability of calling your honorable body together for the purpose of considering and acting upon its report.

Knowing the conscientious manner in which the members of your committee have devoted themselves to the unpleasant but gravely important duty imposed upon them, convinced of the honesty of their purpose and believing them to be animated solely by a steadfast desire to ascertain the facts as they exist and report their findings without favor or prejudice, their recommendation weighed strongly with me. Added to this, the disclosures resulting from their investigation revealed the existence of conditions in certain public offices so inimical to the welfare of the state that I deemed an occasion had arisen that demanded the immediate attention of your honorable body. Accordingly I issued a proclamation on June 3rd calling upon you to convene in extraordinary session on this day to consider and act upon the report and recommendations of your committee, which I transmit herewith.

The findings of that committee bring to light conditions repugnant to the best interests of the state, conditions that cannot longer be tolerated. They contain a serious indictment against the present insurance commissioner of this state and the former secretary of state. The evidence cited in these findings develops the fact that these officials were recreant to their duty, betrayed the trust placed in them and violated every consideration of honor and public obligation that should have regulated their conduct.

Because of these revelations, one of these officials has resigned his office and the evidence that has been gathered brands the other as unfit to continue in a position of responsibility. There is no denial of the moral obliquity on the part of the accused official—merely the specious plea that the letter of the law has not been violated. In the face of the evidence adduced and the admission of the charges made, one course only appears open to the legislature, which is the removal from office of the delinquent officer. There are two methods open to you by which this official may be removed:

1. By impeachment proceedings.
2. By abolishing the office.

The power of impeachment, which is solely vested in the House of Representatives, is an extremely grave and serious responsibility, not lightly to be exercised or heedlessly invoked. But, when an occasion necessitating such proceeding arises, it should be met with firmness, the interests of the individual should be submerged in the interests of the community and deaf ears turned to the sophistry of the corrupt. Such procedure has better application to a case where there are dis-

puted questions of fact as to the guilt or innocence of the officer charged. The other method can be properly applied where the guilt is confessed as in this case.

I recommend that you pursue one or the other of the above methods as you see fit and deem most advantageous.

The fair name of the State of Washington depends upon your action, for, as ex-President Roosevelt so truthfully said, "the exposure of corruption is an honor to a nation, not a disgrace. The shame lies in toleration, not in correction. No city or state, much less the nation, can be injured by the enforcement of the law. \* \* \* If we fail to do all that in us lies to stamp out corruption, we cannot escape our share of the responsibility for the guilt. The first requisite of successful self-government is unflinching enforcement of the law and the cutting out of corruption."

That old saying that "Public office is a public trust" is just as true now as when first uttered, and the official who betrays that trust is a greater menace to society than the highwayman or the murderer. A public official who is so lacking in principle, whose sense of public duty is so dulled that he sees no impropriety in levying a tax or assessment which is little short of blackmail upon those who are compelled to transact business with him officially, outrages every sense of right and morality.

In the case before you for consideration the course for your honorable body to pursue is as well defined as black from white. There is no complication to cloud the right or conceal the wrong. The facts are before you. They have been gathered by a committee of your own creating, a committee composed of those who favored and those who opposed this investigation, and the report of that committee is the unanimous verdict of its members. This case is one which in its gravity rises above the considerations of personal malice or party faction. The question of motive sinks to insignificance in the presence of the revelations resulting from this investigation. The integrity of the republican party, the honor of the state and the interests of the people are at stake. The responsibility of preserving the party, protecting the state and safeguarding the people rests with you. He who would counsel you to disregard the charges presented in the findings of your committee is not only an enemy to the republican party but false to his state and to his constituents.

This legislative body is almost unanimously republican in its composition, and in you is reposed the dual trust of protecting the interests of your constituents and the reputation of your party. The people who gave to you their suffrage will not only hold you individually to account for the course each of you pursue, but will also hold the republican party to account for the result of your collective action.

The republican party has been returned to power in this state with increasing majorities at each succeeding election because the people believed not only in the wisdom of its policies, but also because they had confidence in the ability and integrity of the men it nominated for

office. The only manner in which the party can retain this confidence is to prove itself worthy of the great trust and responsibility of government by purging its ranks of unworthy, dishonest and corrupt officials. The republican party is greater than any individual that it elevates to a position of honor, and, when any such individual fails to measure up to the standard of efficiency and probity demanded by the people, the party cannot afford to countenance the continuance of his presence in its councils or in the place he has debauched. A man who secures an office through his affiliation with a party and then prostitutes that office to mere pecuniary profit deserves no more sympathy from the party which he has imposed upon than from the people whom he has betrayed.

By reason of the exposures made by your investigating committee, a widespread and insistent public demand has arisen for a thorough probing of all offices, departments and institutions of the state government against which the slightest breath of suspicion has been directed. In order that all wrong, if any further exists, may be exposed and corrected and that the honest officials may be freed from unjust suspicion, I recommend that your honorable body continue the present committee and make the necessary provisions for a thorough and searching examination into the administrative affairs of the state.

Opposition to further investigation can come only from those who have something in their official records which they desire to conceal. An honest official welcomes examination into the conduct of his affairs, as such examination can only reflect credit upon him. Absolutely no weight should attach to the argument of expense against the continuance of this committee. The people of this state will never begrudge one cent that is expended in ridding the public service of corruption. You can render no better service to the state than in providing for a continued and effective crusade against dishonesty and venality in office.

In conclusion, I trust your deliberations will be characterized by a spirit of fairness and be confined to the matters growing out of a consideration of the report of your committee.

M. E. HAY, *Governor.*

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#### EXHIBIT "C."

AN ACT creating the state board of insurance commissioners; prescribing its duties; providing for the employment of a secretary, an actuary and examiner and other clerical help; fixing their salaries; making an appropriation; repealing chapter 109 of the Laws of 1907, entitled "An act creating the office of state insurance commissioner, authorizing the appointment of a deputy insurance commissioner, prescribing his duties and fixing salaries," approved March 11, 1907; and declaring an emergency.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. There is hereby created a board to be known as the state board of insurance commissioners. Each member of the state

board of tax commissioners shall be *ex-officio* a member of said board, and the members of the state board of tax commissioners shall constitute the said state board of insurance commissioners.

SEC. 2. The state board of insurance commissioners shall do and perform all of the duties now required or provided by law to be done or performed by the *ex-officio* insurance commissioner, the state insurance commissioner or the deputy state insurance commissioner.

SEC. 3. The state board of insurance commissioners may appoint a secretary, who shall give a bond in the sum of ten thousand dollars (\$10,000.00), conditioned for the faithful performance of the duties of his office, to be approved by the attorney general, and who shall take and subscribe to an oath of office, which, together with said bond and the certificate of his appointment, shall be filed in the office of the secretary of state. Said appointment may be revoked at the will of the state board of insurance commissioners. The said secretary shall receive a salary of eighteen hundred dollars (\$1,800.00) per year.

The said state board of insurance commissioners may also employ an actuary and examiner, who shall receive a salary of two thousand dollars (\$2,000.00) per year, and who shall give a bond in the sum of ten thousand dollars (\$10,000.00), conditioned for the faithful performance of the duties of his office, to be approved by the attorney general, and who shall take and subscribe to an oath of office, which, together with said bond and the certificate of his appointment, shall be filed in the office of the secretary of state. Said appointment may be revoked at the will of the state board of insurance commissioners.

The said state board of insurance commissioners may also employ a clerk at a salary not to exceed twelve hundred (\$1,200.00) dollars per year, and a stenographer at a salary not to exceed nine hundred dollars (\$900.00) per year; all such salaries to be payable monthly.

SEC. 4. The said state board of insurance commissioners shall adopt and use an official seal; a majority of said board shall constitute a quorum to transact business; the secretary shall keep full and correct minutes of all transactions and proceedings of the board and perform such duties as may be required by the board. The members of the said board, the secretary and other employes thereof, shall be entitled to receive their necessary traveling expenses while traveling on the business of the board. The said board may hold sessions at any place in the state when deemed necessary and proper. The board shall be furnished with an office and supplies in the state capitol in the same manner as other state officials.

SEC. 5. To carry into effect the provisions of this act, there is hereby appropriated from the general fund of the state the following sums, or so much thereof as may be found necessary:

For salary of secretary, at \$1,800 per year.....	\$3,300 00
For salary of actuary and examiner, at \$2,000 per year.....	3,600 00
For salary of clerk, at \$1,200 per year.....	2,200 00
For salary of stenographer, at \$900.00 per year.....	1,650 00
For postage, incidentals and traveling expenses.....	3,600 00



—this appropriation being intended to take the place of and supersede the appropriation made for the office of the state insurance commissioner under the provisions of chapter 243 of the Session Laws of 1909.

SEC. 6. Chapter 109 of the Laws of 1907, entitled "An act creating the office of state insurance commissioner, authorizing the appointment of a deputy insurance commissioner, prescribing his duties and fixing salaries," and all other acts or parts of acts in conflict herewith, are hereby repealed.

SEC. 7. An emergency exists, and this act shall take effect immediately.

### EXHIBIT "D."

*In the Superior Court of the State of Washington, in and for  
Spokane County.*

STATE OF WASHINGTON,	}	<i>AFFIDAVIT.</i>
<i>Plaintiff,</i>		
vs.		
J. H. SCHIVELY,		
<i>Defendant.</i>		

STATE OF WASHINGTON, COUNTY OF SPOKANE, ss.

E. C. MACDONALD, being first duly sworn, deposes and says that he is one of the attorneys for the defendant in the above entitled action; that a duly authenticated copy of the amended indictment herein is hereto attached, marked Exhibit "1," and made a part hereof.

That on to-wit, the 27th day of April, 1909, the defendant was arraigned before the above entitled court, at which time a motion to quash the indictment and a demurrer thereto were filed.

That on the 29th day of May, 1909, the said court set this cause for trial on the 8th day of June, 1909.

That on the 1st day of June, 1909, the said motion to quash and the demurrer were argued before said court and the demurrer was sustained; that on said day the court continued the trial of this cause until the 15th day of June, 1909.

That on to-wit, the 4th day of June, 1909, an amended indictment (copy hereto attached) was filed herein and the defendant was arraigned thereon.

That on the 5th day of June, 1909, a motion to quash and a demurrer thereto were filed, argued and overruled; that on said last named day a motion to vacate the setting of the trial of said cause was argued and granted by the court and on the said last named day defendant entered his plea of not guilty; that the court granted said motion to vacate the setting of the trial of this cause upon a showing that a special session of the legislature of the State of Washington had been called by the governor, for the purpose of considering impeachment proceedings

against the above named defendant; that the above entitled cause is now at issue, and will in all probability be set for trial shortly after the 1st day of September, 1909.

E. C. MACDONALD.

Subscribed and sworn to before me this 7th day of July, A. D. 1909.

H. MAXWELL BROOKS,

[NOTARIAL SEAL.]

*Notary Public in and for the State of  
Washington, residing at Spokane.*

# EXHIBIT 1.

*In the Superior Court of the State of Washington, for Spokane County.*

THE STATE OF WASHINGTON.

*Plaintiff.*

vs.

J. H. SCHIVELY,

*Defendant.*

INDICTMENT.

J. H. Schively is accused by the grand jury in and for the county of Spokane and State of Washington by this indictment of the crime of perjury committed as follows:

That on or about the 10th day of March, 1909, this grand jury in and for Spokane county, State of Washington, was duly and lawfully impaneled, sworn, charged and organized by William A. Huneke, one of the judges of the superior court for said Spokane county, State of Washington, and that thereafter on the 20th day of April, 1909, said grand jury, organized as aforesaid, was then and there lawfully in session and was then and there lawfully engaged in a certain investigation to determine whether J. B. Schrock, W. J. Walker, F. H. Hilliker and W. M. Hunter had theretofore in said Spokane county, State of Washington, and within three years from said date committed the crime of larceny by embezzlement of certain sums of money, the personal property of Pacific Live Stock Association, a corporation, while acting as trustee of said corporation, said grand jury being then and there duly authorized and empowered by law and having competent jurisdiction to conduct said investigation; that thereupon J. H. Schively, this defendant, was then and there called and in due form of law sworn as a witness by Ben F. Davis, the duly appointed, qualified and acting foreman of said grand jury, who then and there administered to said J. H. Schively an oath that the evidence which he, the said J. H. Schively, was then and there about to give in the matter of said investigation then and there pending before said grand jury should be the truth, the whole truth and nothing but the truth, the said Ben F. Davis as foreman of said grand jury then and there being authorized and empowered by law to administer said oath to said J. H. Schively in that behalf, and that the said J. H. Schively, then and there being duly sworn as a witness as aforesaid, it then and there became and was a matter

material to said investigation whether the said witness, the said J. H. Schively, on or about the 10th day of July, 1906, entered into an agreement or contract or had an understanding with one E. R. Ward, said E. R. Ward then and there being president and trustee of said Pacific Live Stock Association, or with said E. R. Ward and J. B. Schrock, W. J. Walker, F. H. Hilliker, S. G. Copeland and W. M. Hunter, they being officers of said company, or with any of them, whereby said E. R. Ward should resign as president and trustee of said corporation in favor of said J. H. Schively, this defendant, and said J. H. Schively, this defendant should be elected president and trustee of said corporation in the place and stead of said E. R. Ward in consideration of the payment by said J. H. Schively to said E. R. Ward of the sum of \$1,200.00; and whether said E. R. Ward on or about said 10th day of July, 1906, sold, transferred or assigned to said J. H. Schively any interest, rights or privileges in said corporation, or to the revenues, commissions or mileage derived therefrom or any part thereof for any sum of money or for any consideration whatsoever; and whether the resignation of said E. R. Ward as president and trustee of said corporation on or about the date aforesaid and the election of said J. H. Schively as president and trustee of said corporation in the place and stead of said E. R. Ward was due to or in pursuance of any agreement, contract or understanding between said E. R. Ward and said J. H. Schively or between said Ward, Schrock, Walker, Hilliker, Copeland and Hunter and said Schively or on account of any consideration whatsoever flowing or to flow from said J. H. Schively to said E. R. Ward, and whether said J. H. Schively on or about said last mentioned date executed and delivered or caused to be delivered to said E. R. Ward, directly or indirectly, three certain promissory notes for \$400.00 each, payable to said Ward or his assigns in 30, 60 and 90 days in pursuance of said agreement, contract or understanding, or at all; and whether the account of the said J. H. Schively was thereafter, with his knowledge and consent, charged with three items of \$400.00 each on account of the payment by said Schively or by said corporation for the benefit and by the authority and with the knowledge and consent of said Schively of the sum of \$1,200.00 to said E. R. Ward or his assigns in payment of said three promissory notes of \$400.00 each; and whether thereafter the said J. H. Schively or the duly authorized officers of said corporation, for his benefit and by his authority and with his knowledge and consent, drew three certain checks for \$400.00 each in favor of said E. R. Ward or in favor of the Fidelity National Bank of Spokane, for the use and benefit of said E. R. Ward or his assigns, in payment of said three promissory notes of \$400.00 each; and whether said checks, drawn as aforesaid, were at the time of the drawing thereof or at any time charged to the account of said J. H. Schively upon the books of said corporation by the authority and with the knowledge and consent of said J. H. Schively, and whether said J. H. Schively during the months of July, August, September, and October, 1906, and while president and trustee of said corporation, was paid a salary of \$400.00 per

month for his services as an officer of said corporation; and whether said J. H. Schively received any other compensation whatsoever, directly or indirectly, for his services as such officer; and whether said J. H. Schively during the period of time last aforesaid, and while an officer of said corporation as aforesaid, was paid for his services as such officer upon the basis of commissions or mileage on insurance written by said corporation or by agents employed by it; and whether on or about the 8th day of October, 1906, said J. H. Schively entered into an agreement, contract or understanding with one Bennington wherein and whereby said J. H. Schively, for a consideration of \$400.00, paid to him or to said corporation for his use and benefit by said Bennington, agreed to resign and did resign as a trustee and officer of said corporation in favor of said Bennington, and did cause or procure, or aid in causing and procuring, the election of said Bennington as an officer and trustee of said corporation, in consideration of the payment to said J. H. Schively by said Bennington of the sum of \$400.00 as aforesaid; and whether said J. H. Schively, during the time of his service as president and trustee of said corporation, received any sums of money whatsoever from said corporation for his services as such president and trustee or at all other than a salary of \$400.00 per month; and whether said J. H. Schively, while serving as president and trustee of said corporation as aforesaid, during the period of time aforesaid, received commissions from said corporation amounting to \$1,815.60, or to any other sum; and whether said J. H. Schively, while serving as president and trustee of said corporation as aforesaid, and during the time aforesaid or at any subsequent time, received the sum of \$400.00 from said Bennington on account of the resignation of said J. H. Schively as aforesaid; and whether said J. H. Schively, while serving as president and trustee of said corporation as aforesaid, and during the period of time aforesaid, received from said corporation as compensation for his services the total sum of \$2,597.35, and the said witness, J. H. Schively, this defendant, did then and there before said grand jury, organized as aforesaid, and after being duly sworn by the foreman thereof as aforesaid, in the matter of said investigation, wilfully, unlawfully, feloniously, falsely, corruptly and knowingly, and contrary to said oath, depose, testify and swear as true, among other things, in substance and to the effect following, that is to say:

That he, the said witness, J. H. Schively, on or about the 10th day of July, 1906, at the time of his being elected president and trustee of said Pacific Live Stock Association, a corporation, was employed by the trustees of said corporation upon the basis of a flat salary of \$400.00 per month, and that during the entire time of his connection with the said corporation as an officer thereof, as aforesaid, that is to say, from the 10th day of July, 1906, to the 8th day of October, 1906, he received no compensation whatsoever from said corporation by reason of his being an officer thereof as aforesaid, or by reason of any services rendered said corporation as an officer thereof, or at all, except said flat salary of \$400.00 per month; that he had no agreement, contract or

understanding with said E. R. Ward, or with said E. R. Ward and the other trustees of said corporation or any of them, prior to or at the time of his becoming an officer of said corporation, or at any time, that said E. R. Ward in consideration of the sum of \$1,200.00, or any other sum whatsoever, paid, or agreed to be paid, by said J. H. Schively to him, should resign as president and trustee of said corporation in favor of said J. H. Schively, and that he, the said J. H. Schively, through the influence or procurement of said E. R. Ward, or through the influence or procurement of said E. R. Ward and the other trustees of said corporation or any of them succeed said Ward as president and trustee of said corporation; that said E. R. Ward did not, on or about the 10th day of July, 1906, or at any time, sell, transfer or assign to him, the said J. H. Schively, any interest, right or privilege in said corporation or to the revenue, mileage or commissions derived, or to be derived, from said corporation, or any part thereof; that he, the said J. H. Schively, did not, on or about the 10th day of July, 1906, or at any time, execute and deliver or cause to be executed or delivered, to said Ward three certain promissory notes of \$400.00 each, payable in 30, 60 and 90 days, or any notes whatsoever, in consideration of the resignation of said Ward as president and trustee of said corporation, or in consideration of the transfer by said E. R. Ward to said J. H. Schively of his, the said Ward's, right to collect and receive any commissions or mileage on insurance written, or to be written, by or for said corporation; that he, the said J. H. Schively, while president and trustee of said corporation, during the period of time aforesaid, did not collect, charge or receive any commissions or mileage upon insurance written, or to be written, by or for said corporation as compensation for his service as an officer of said corporation or for any reason whatsoever; that his, the said J. H. Schively's, account with said corporation, while president and trustee thereof, as aforesaid, was not by his permission, or consent, or with his knowledge charged with the three items of \$400.00 each on account of the payment by said corporation, for the use and benefit of said J. H. Schively, out of moneys due and owing by said corporation to said J. H. Schively, of said three promissory notes, executed by said J. H. Schively in favor of said E. R. Ward and held by the Fidelity National Bank of Spokane; that he, the said J. H. Schively, did not know that during the time of his service as president and trustee of said corporation, he or the duly authorized officers of said corporation or any person whatsoever, drew three certain checks for \$400.00 each upon the funds of said corporation, or upon the funds of said J. H. Schively held by said corporation, in favor of said E. R. Ward or in favor of the Fidelity National Bank of Spokane, for the use and benefit of said Schively, and in payment of said three promissory notes of \$400.00 each; that he did not learn until he examined the receiver's report long after he had severed his relations with said corporation, as president and trustee thereof, that said three checks of \$400.00 each had been drawn in payment of said three \$400.00 notes; and that he did not know at the time of the drawing of said checks,

or at any time prior to his examination of said receiver's report many months thereafter, that his account with said corporation while president and trustee thereof, had been charged with said checks; that he did not during the time of his service as president and trustee of said corporation, or at any time, receive from said corporation, as commissions or mileage on insurance written by or for said corporation the sum of \$1,815.60, or any sum whatsoever; that he did not on or about the 8th day of October, 1906, or at any time, enter into any contract, agreement or understanding with one Bennington to resign as president and trustee of said corporation in favor of said Bennington, and to use his influence in securing the election of said Bennington as a trustee of said corporation in consideration of the payment by said Bennington to him, the said J. H. Schively, of the sum of \$400.00, or any sum whatsoever; and that he did not, at the time of his resignation as president and trustee of said corporation, or at any time, receive from said Bennington, directly or indirectly, the sum of \$400.00 in consideration of his, the said J. H. Schively's, resigning the office of president and trustee of said corporation, held by him as aforesaid, or for any purpose whatsoever; that he, the said J. H. Schively, did not at the time of his service as president and trustee of said corporation, or at any time, receive from said corporation as compensation for his services, or as commissions or mileage on insurance written by or for said corporation, the sum of \$2,597.35, or any sum whatsoever greater than \$1,300.00, which last mentioned sum he received as salary and expenses; that he, the said Schively, never realized any benefit whatsoever, directly or indirectly, by reason of the execution and delivery to said E. R. Ward of said three promissory notes of \$400.00 each, or from the payment of the same; and that his, the said J. H. Schively's, election as president and trustee of said corporation was not due, directly or indirectly, to the execution and delivery of said notes to said E. R. Ward, or to the payment of the same, but was due solely to his employment by the other trustees of said corporation as a manager for said corporation at the stipulated salary of \$400.00 per month; that he, the said J. H. Schively, did not pay to the said E. R. Ward, for his, said Ward's, position as president and trustee of said corporation, or for his, said E. R. Ward's, commissions or mileage on insurance written, or to be written, by or for said corporation, any sum of money whatsoever; that he never saw said three promissory notes of \$400.00 each, payable in 30, 60 and 90 days to said E. R. Ward or his assigns; that immediately after he became president and trustee of said corporation he, the said J. H. Schively, together with the other trustees of said corporation, waived all right or claim to compensation based upon commissions, or mileage on insurance written, or to be written, by or for said corporation, and that he, together with the other trustees of said corporation, during the period of time aforesaid, went onto a flat salary basis of \$400.00 per month each.

Whereas, in truth and in fact, he, the said J. H. Schively, well knew at the time of giving the testimony aforesaid, before said grand jury

as aforesaid, that shortly before the 10th day of July, 1906, he, the said J. H. Schively, entered into an agreement and contract with said E. R. Ward, who was then and there president and a trustee of said corporation, that for and in consideration of the sum of \$1,200.00, paid by said J. H. Schively to said E. R. Ward, the said E. R. Ward should resign as president and trustee of said corporation in favor of said J. H. Schively, and said E. R. Ward should use his influence with the other trustees of said corporation to procure the election of said J. H. Schively as president and trustee of said corporation, in the place and stead of said E. R. Ward, with the same rights and privileges to commissions and mileage on insurance written, and to be written, by and for said corporation, which had theretofore been employed by said E. R. Ward; and that the said E. R. Ward then and there further agreed with said J. H. Schively that said sum of \$1,200.00 should be paid by said J. H. Schively to said E. R. Ward in three monthly installments of \$400.00 each, and that the said J. H. Schively, to secure the payment of said sum of money, should execute and deliver to said E. R. Ward his three promissory notes, payable in 30, 60 and 90 days, in the sum of \$400.00 each; and that, on the 10th day of July, 1906, said agreement theretofore entered into between said J. H. Schively and said E. R. Ward as aforesaid was ratified and confirmed by the other trustees of said corporation, and that on said date said E. R. Ward did resign as president of said corporation and in favor of said J. H. Schively and did then and there recommend and procure the election of said J. H. Schively as president and trustee of said corporation; and that said J. H. Schively for and in consideration of the resignation of said E. R. Ward as aforesaid and in consideration of the agreement between said J. H. Schively and said E. R. Ward, ratified and confirmed by the other trustees of said corporation as aforesaid, pursuant to which the said J. H. Schively should enjoy the same rights to commissions and mileage as had heretofore been enjoyed by said E. R. Ward, executed and delivered to said E. R. Ward his three certain promissory notes for \$400.00 each, payable in 30, 60 and 90 days; and that the said J. H. Schively, on said 10th day of July, 1906, became and until the 8th day of October, 1906, remained president and trustee of said corporation, solely by virtue and by reason of his purchase of the offices, rights and privileges of the said E. R. Ward, as aforesaid; and that at no time did he, the said J. H. Schively, receive as compensation for his service as an officer of such corporation the sum of \$400.00 per month, or any sum whatsoever, as salary, but that the only compensation received by said J. H. Schively, as such officer of said corporation, was computed from month to month upon a basis of commissions and mileage on insurance written, and to be written, by and for said corporation, and that the said J. H. Schively's account with said corporation while president and trustee, as aforesaid, was, by his permission, and with his knowledge and consent, charged with the three items of \$400.00 each on account of the payment by said corporation for the use and benefit of the said J. H. Schively, out of the moneys due and owing by said corporation

to said J. H. Schively, of said three promissory notes theretofore executed by said J. H. Schively in favor of the said E. R. Ward and held by the Fidelity National Bank of Spokane; and that, with the knowledge and consent, and by the direction, of the said J. H. Schively, during the period of time aforesaid, the duly authorized officers of said corporation drew three certain checks for \$400.00 each upon the funds of the said corporation and upon the funds of the said J. H. Schively, held by said corporation, in payment of his, the said J. H. Schively's, said three promissory notes; and that, with the knowledge and consent, and by the direction of the said J. H. Schively, his account with said corporation was charged with said three \$400.00 checks from time to time as they were drawn, and that he, the said J. H. Schively, while president and trustee of said corporation as aforesaid, and during the period of time aforesaid, received from said corporation as commissions and mileage on the insurance written by and for said corporation the sum of \$1,815.60; and that he, the said J. H. Schively, on or about the 8th day of October, 1906, entered into a contract, agreement and understanding with one Bennington, to resign as president and trustee of said corporation in favor of said Bennington, and to use his influence in procuring the election of said Bennington as a trustee of said corporation, in consideration of the payment by said Bennington to him, the said J. H. Schively, of the sum of \$400.00; and that he, the said J. H. Schively, on or about the said 8th day of October, 1906, did resign as president and trustee of said corporation and did procure and bring about the election of the said Bennington as trustee of said corporation, for and in consideration of the sum of \$400.00, then and there paid by said Bennington to said J. H. Schively; and that he, the said J. H. Schively, was not, on the 10th day of July, 1906, or at any time, employed by the trustees of said corporation as manager thereof; and that the trustees of said corporation did not pay, and did not agree to pay, to said J. H. Schively a salary of \$400.00 per month or any salary whatsoever, and that neither the said J. H. Schively nor the other trustees of said corporation, during the time of service of said J. H. Schively as an officer thereof, waived any right or claim to compensation based upon commissions or mileage on insurance written, or to be written, by or for said corporation, but that he, the said J. H. Schively, together with the other trustees of said corporation, during the period of time aforesaid, were compensated solely upon a basis of commissions and mileage computed upon insurance written, and to be written, by and for said corporation; and so the said witness, J. H. Schively, wilfully, unlawfully, feloniously, falsely, corruptly and knowingly, and contrary to his said oath taken as aforesaid, in the manner and form aforesaid, did then and there commit the crime of perjury.

Dated at Spokane, Washington, in the county aforesaid, this 4th day of June, A. D. 1909.

FRED C. PUGH, *Prosecuting Attorney.*

A True bill:

BEN F. DAVIS, *Foreman of the Grand Jury.*



Names of all witnesses examined before the grand jury in the finding of this indictment are:

C. A. Murray, E. R. Ward, Mrs. E. R. Ward, J. B. Schrock, S. G. Copeland, J. J. White, Loyd E. Gandy.

STATE OF WASHINGTON,	}	ss.	STATE OF WASHINGTON, <i>Plaintiff,</i>
County of Spokane.			vs. J. H. SCHIVELY, <i>Defendant.</i>

No. 3712.

*Certificate.*

I, C. E. Atkinson, clerk of the superior court of the State of Washington, for the county of Spokane, do hereby certify that the above and foregoing is a true and correct copy of the indictment in the above entitled cause as the same now appears on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 6th day of July, 1909.

[SEAL.]

C. E. ATKINSON, *Clerk.*

By OTTO BLEUNER, *Deputy.*

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SENATE CHAMBER,  
OLYMPIA, WASH., July 14, 1909.

The following replication of the complainants was this day filed with the secretary of the Senate:

*In the Senate of the State of Washington Sitting as a High Court of Impeachment.*

THE HOUSE OF REPRESENTATIVES OF THE STATE  
OF WASHINGTON, in the name of Themselves  
and of all of the People of the State of  
Washington,

*Complainants.*

vs.

*REPLICATION.*

JOHN H. SCHIVELY, Insurance Commissioner of  
the State of Washington,

*Respondent.*

Come now Leo. O. Meigs, Lester P. Edge, and W. W. Sparks, the managers of the House of Representatives, in person and by W. P. Bell, attorney general, and George A. Lee, assistant attorney general, their counsel, and for reply to the answer of John H. Schively to the articles of impeachment filed herein say:

I.

That the objections to the participation in said trial by certain senators made by the said J. H. Schively and contained in paragraphs one,

two, three and four of said answer should be overruled, for the reason that article V of the Constitution of the State of Washington provides that "all impeachments shall be tried by the Senate," and that there is no provision for any senator being excused or for any person taking his place in the trial of impeachments in case a senator should be excused; and for the further reason that said objections contained in said paragraphs of said answer do not state facts sufficient to disqualify said senators or any of them from sitting in the trial of said impeachment.

## II.

That the motion to strike article XXV of said articles of impeachment, contained in paragraph five of said answer, should be denied for the reason that section 2, article V of the Constitution of the State of Washington provides that the party impeached, "whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law."

## III.

That the demurrers contained in paragraphs six to twenty-four, inclusive, of said answer to said articles of impeachment should be overruled, for the reason that the matters therein stated furnish no foundation in law or in fact for the sustaining of said demurrers.

## IV.

And replying to the further answer of the said J. H. Schively, said managers deny each and every affirmative allegation contained in paragraphs one to twenty-three, inclusive, of said answer, which denies or traverses any allegation contained in the articles of impeachment heretofore filed herein; and especially deny that the said J. H. Schively was simply an employee in the office of secretary of state; but allege that the said J. H. Schively was the duly appointed and acting deputy insurance commissioner of the State of Washington during the times therein mentioned.

## V.

And replying to the further and affirmative defense contained in paragraphs one to ten, inclusive, of said answer, said managers say:

*First.* That the matters and things alleged and set forth in said affirmative defense do not state facts sufficient to constitute a defense to said articles of impeachment or any part thereof.

*Second.* That all the matters and things contained in said affirmative defense are entirely foreign to any facts alleged in the articles of impeachment, and do not in any manner deny or controvert the said articles of impeachment, or any of them, or any part thereof; and that said matters and things so contained in said affirmative defense are utterly irrelevant and immaterial and tend only and solely to cloud the true issues herein.

*Third.* That the said matters and things contained in said affirmative defense, and more particularly contained in paragraph nine thereof,

are denials of conclusions stated in the report of the Investigating Committee filed as an exhibit in said answer, and do not deny or purport to deny any allegations contained in the articles of impeachment filed herein.

## VI.

And replying further. the said managers state that they have considered the several answers of the said J. H. Schively, insurance commissioner of the State of Washington, to the several articles of impeachment against him by the House of Representatives exhibited in the name of themselves and of all the people of the State of Washington, and reserving to themselves all advantage of exception to the sufficiency, competency or relevancy of his answer to each and all the said articles of impeachment exhibited against the said J. H. Schively, insurance commissioner of the State of Washington, do deny each and every averment and allegation in said several answers or allegations or either of them which denies or traverses the acts, intents, crimes or misdemeanors charged against the said J. H. Schively in said articles of impeachment or either of them; and for replication to said answer do say that the said J. H. Schively, insurance commissioner of the State of Washington, is guilty of the high crimes, misdemeanors and malfeasance in office mentioned in said articles, and that the House of Representatives by the said managers are ready to prove the same.

LEO. O. MEIGS,  
LESTER P. EDGE,  
W. W. SPARKS,  
*Managers.*

W. P. BELL, Attorney General,  
GEO. A. LEE, Assistant Attorney General,  
*Counsel for Managers.*

STATE OF WASHINGTON, }  
COUNTY OF THURSTON. } ss.

Lester P. Edge, being first duly sworn, on oath deposes and says: That he is one of the managers above named; that he has read the foregoing replication, knows the contents thereof, and the same is true, as he verily believes.

LESTER P. EDGE.

Subscribed and sworn to before me this 12th day of July, 1909.

W. F. MAGILL,  
*Notary Public in and for the State of Wash-  
ington, residing at Olympia, Washington.*

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SENATE CHAMBER,  
OLYMPIA, WASH., July 20, 1909.

Pursuant to notice served on Geo. C. Israel, counsel for the respondent, J. H. Schively, appeared Honorable W. P. Bell, attorney general of the State of Washington, and counsel for the board of managers, before President A. S. Ruth, and petitioned that commissions be issued for the purpose of taking testimony of witnesses in foreign states, upon the submitted written interrogatories. The president instructed the secretary to issue the commissions and forward the said depositions to the proper officers.

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SENATE CHAMBER,  
OLYMPIA, WASH., August 6, 1909.

Pursuant to notice served on Attorney General W. P. Bell, counsel for the board of managers, appeared Geo. C. Israel, counsel for the respondent, J. H. Schively, before President A. S. Ruth, and petitioned that commissions be issued to take the testimony of fifty-eight witnesses in foreign states, upon the interrogatories submitted. Attorney Bell and Mr. Manager Meigs objected to the interrogatories, both as to the number of depositions and as to the materiality of the question propounded.

The secretary was instructed by the president to issue commissions to take the testimony of thirty of the witnesses, the attorney for the respondent to select the parties whose testimony should be taken.

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SENATE CHAMBER,  
OLYMPIA, WASH., August 11, 1909.

The Senate, sitting as a court of impeachment, convened at 2:30 p. m., President Ruth presiding.

BY MR. ISRAEL: *Mr. President and Gentlemen of this Honorable Court*—Under the rules of procedure that were adopted by this honorable body as a Senate, to govern it while sitting as a high court of impeachment, it has been necessary for the respondent to group in his single answer each and every legal objection that he sees fit to urge in

this honorable court, as well as his answer to the sufficiency of the articles of impeachment and to the merits.

Ordinarily, in the common practice that obtains in the courts, the matters to which I now address myself would have been filed, urged and passed upon before the coming of the respondent's answer to any of the charges that are made against him in the articles of impeachment; but under this practice these matters are, as a matter of necessity, incorporated in the answer.

In the opening of his answer and at the threshold of this proposed trial the respondent challenges the right of certain of these senators to sit as members of this court, basing his challenge upon the allegation that each and all of such honorable gentlemen are disqualified to sit as triers of the articles of impeachment exhibited by the House. The reasons of the disqualification as to each of them are fully set forth in the objections and under the oath of the respondent as to their truthfulness.

In the answer, the first objection and challenge is to the ineligibility of Senator Paulhamus to so sit, and the reasons assigned under oath that are claimed to disqualify him are set forth in a separate paragraph.

The second challenge is directed against Senator Fishback, and again the reasons are fully set forth in a separate paragraph.

The third challenge is as to the competency of Senator Allen to sit, and again the reasons for his exclusion are fully set forth, while in yet a fourth paragraph the reasons are alleged as to the disqualification of all three of these mentioned senators, and, as well, Senators Anderson, Arrasmith, Blair, Brown, Cox, Davis, Falconer, Fatland, McGregor, Myers, Polson and Stevenson.

To separately discuss each of these paragraphs would necessitate four arguments which can be accomplished in one; therefore, as a matter of expediency and to save time, I direct my discussion generally to all four of the paragraphs as to the disqualification of the various senators as enumerated and set forth in each of those paragraphs, expecting this honorable court at the conclusion of the argument to pass upon these objections separately and in the order in which they are set forth in the answer.

In order that these objections and the reasons for these challenges may be fresh in our minds while discussing them, I will read them:

#### I.

The respondent objects and excepts to the sitting herein as a member of this court of one W. H. Paulhamus, senator-elect from the twenty-fifth senatorial district of the State of Washington, and by virtue of his said office a member of this court, and who purposes to sit as a member thereof in the trial of this respondent, and to determine therein both the questions of law and fact to be therein determined, and as well the guilt or innocence of this respondent as to the matters and things charged in said articles of impeachment, for the reason that the said Paulhamus, as a member of this honorable court and tribunal, is disqualified from such membership by reason of his bias and prejudice and personal enmity towards this respondent, in this: That heretofore the said Paulhamus, as such senator, at the

regular session of the legislature of the State of Washington, begun and held on the 11th day of January, 1909, did join in a report to the Senate of said legislature recommending the investigation and examination of the affairs of this respondent's office, and as well those of the insurance department of the State of Washington for past years.

That thereafter, and after the filing of the report of a certain committee of investigation that grew out of such resolution, the said Paulhamus did on or about Saturday, the 12th day of June, 1909, at Puyallup, in the county of Pierce, State of Washington, while discussing the calling of the extraordinary session of the legislature of the State of Washington, out of which these articles of impeachment grew, and while discussing the said report in so far as it related to this respondent, say among other things of and concerning this respondent, as follows, to-wit: "If the public sentiment I have met with is the same elsewhere, the Schively incident should be closed within twenty-four hours after two o'clock of the afternoon of June twenty-third. It is my belief there will not be a single vote in either the House or the Senate for the retention of Schively in his present position. \* \* \* I have failed to find a single person who does not believe Mr. Schively is absolutely guilty and should be removed from office." And that the said statements by the said Paulhamus were of and concerning the guilt or innocence of this respondent of the matters and things now charged herein against him in these articles of impeachment, and at said time a matter of the charges against this respondent in the report of the said investigating committee to the governor of the State of Washington.

That the said Paulhamus from thence until the present time has many times expressed his abiding conviction of the guilt of this respondent as to matters and things charged in said articles of impeachment, both in debate in the Senate of the State of Washington and in and about the corridors of the state house of the State of Washington, and in the public places of the cities of Olympia and Tacoma; and that the said Paulhamus has pre-judged the guilt or innocence of this respondent, and expressed his conviction of his guilt, and exhibited actual bias and prejudice and personal enmity towards this respondent, and that the said Paulhamus cannot sit in this honorable court as a fair and impartial judge or member of jury to pass upon any question of law or fact that must be decided by the members of this honorable court, or act as a fair or impartial judge or juror herein.

## II.

The respondent objects and excepts to the sitting herein as a member of this court of one P. L. Allen, senator-elect from the thirty-third senatorial district of the State of Washington, and by virtue of his said office a member of this court, and who purposes to sit as a member thereof in the trial of this respondent, and to determine therein both the questions of law and fact to be therein determined, and as well the guilt or innocence of this respondent as to the matters and things charged in said articles of impeachment, for the reason that said Allen, as a member of this honorable court and tribunal, is disqualified from such membership by reason of his bias, prejudice and personal enmity towards this respondent, in this: That heretofore, on March 11, 1909, the legislature of the State of Washington adopted House concurrent resolution No. 16, authorizing the appointment of a legislative investigating committee for the purpose of investigating certain state offices, including that of the secretary of state and the insurance commissioner of the State of Washington, and according to said resolution the president of the Senate of the State of Washington and the speaker of the House thereof did appoint a committee to be constituted as an investigating committee, and which consisted of five

members, one of whom was the said Allen; and that thereafter the said committee and the said Allen, as chairman thereof, did proceed to the investigation of the insurance department in the office of the secretary of state, as the same was constituted by law prior to the 13th day of January, 1909, and of the office of the state insurance commissioner after said date, which was then and is now held by your respondent; and the said Allen, as a member of said committee, did join with the said committee in a report to the Honorable M. E. Hay, governor of the State of Washington, of the findings of said legislative investigating committee concerning the department of the secretary of state and insurance commissioner of the State of Washington, and did incorporate in said findings eighteen purported findings of fact, together with one conclusion by them deduced therefrom all of which more fully appears from a copy of said report which is attached to this answer and marked "Exhibit A," and now made a part of this objection and exception, and now referred to in connection therewith and to be considered therewith, and from the said findings did conclude and report to the said governor, among other things, that he found that this respondent had been guilty of wrongful, arbitrary and unwarranted conduct, and such as was not only highly reprehensible but extremely injurious to the interests of the insuring public of this state, and that by his gross neglect of official duties he had caused insolvent, irresponsible and fraudulent companies to flourish and prosper for a time; and that he had failed to perform the duties imposed upon him by the insurance laws, and that he had been shown to be incompetent and inefficient, and had brought the insurance department of the State of Washington into great disrepute, both in this state and abroad; and that he had wrongfully collected excessive fees, and that by his conduct had branded himself as a corrupt and unworthy public official.

And the said Allen did by the said report and by his conclusions therein express to the said governor that he had determined in his own mind and to his own satisfaction that this respondent was and had been guilty of malfeasance and misfeasance in office, and did exhibit therein a condition of mind greatly biased and prejudiced against this respondent, and an enmity towards and to him; and that all the matters and things so set forth in the said findings, from which the said conclusion was so announced by the said Allen, are the identical matters and things set forth in the articles of impeachment herein by the House of Representatives aforesaid as high crimes, misdemeanors and malfeasance in office, as to the guilt or innocence of which it is proposed by the said trial by this court that this respondent shall now be adjudged guilty or innocent, each of the said findings of fact as aforesaid in said report being the basis of an article of impeachment in the articles of impeachment here exhibited for the answer and trial of this respondent as to his guilt or innocence.

That the said Allen from thence until the present time has many times expressed his abiding conviction of the guilt of this respondent as to the matters and things charged in said articles of impeachment, and that the said Allen has pre-judged the guilt or innocence of this respondent in relation thereto, has expressed his conviction of the respondent's guilt, and exhibited actual bias and prejudice and personal enmity towards this respondent, and that the said Allen cannot sit in this honorable court as a fair and impartial judge or member of jury to pass upon any of the questions of law or fact that must be decided by the members of this honorable court in passing upon each of said articles of impeachment, and cannot sit as a fair or impartial judge or juror herein, but will, if permitted to sit for the trial of respondent herein, take with him in said trial such bias, prejudice, enmity, opinion and pre-judgment to abide with him during the trial irrespective of the

evidence, and to influence him and guide his judgment in his final vote upon the guilt or innocence of this respondent, should such vote be required during the trial herein.

### III.

The respondent objects and excepts to the sitting herein as a member of this court of one H. O. Fishback, senator-elect from the twentieth senatorial district of the State of Washington, and by virtue of his said office a member of this court, and who purposes to sit as a member thereof in the trial of this respondent, and to determine therein both the questions of law and fact to be therein determined, and as well the guilt or innocence of this respondent as to the matters and things charged in said articles of impeachment, for the reason that said Fishback, as a member of this honorable court and tribunal, is disqualified from such membership by reason of his bias, prejudice and personal enmity towards this respondent, in this: That heretofore, on March 11, 1909, the legislature of the State of Washington adopted House concurrent resolution No. 16, authorizing the appointment of a legislative investigating committee for the purpose of investigating certain state offices, including that of the secretary of state and insurance commissioner of the State of Washington, and according to said resolution the president of the Senate of the State of Washington and the speaker of the House thereof did appoint a committee to be constituted as an investigating committee, and which consisted of five members, one of whom was the said Fishback; and that thereafter the said committee and the said Fishback, as a member thereof, did proceed to the investigation of the insurance department in the office of the secretary of state, as the same was constituted by law prior to the 13th day of January, 1909, and of the office of the state insurance commissioner after said date, which was then and is now held by your respondent; and the said Fishback, as a member of said committee, did join with the said committee in a report to the Honorable M. E. Hay, governor of the State of Washington, of the findings of said legislative investigating committee concerning the department of the secretary of state and insurance commissioner of the State of Washington, and did incorporate in said findings eighteen purported findings of fact, together with one conclusion by them deduced therefrom, all of which more fully appears from a copy of said report which is attached to this answer and marked "Exhibit A," and now made a part of this objection and exception, and now referred to in connection therewith and to be considered therewith, and from the said findings did conclude and report to the said governor, among other things, that he found that this respondent had been guilty of wrongful, arbitrary and unwarranted conduct, and such as was not only highly reprehensible, but extremely injurious to the interests of the insuring public of this state, and that by his gross neglect of official duties he had caused insolvent, irresponsible and fraudulent companies to flourish and prosper for a time; and that he had failed to perform the duties imposed upon him by the insurance laws, and that he had been shown to be incompetent and inefficient, and had brought the insurance department of the State of Washington into great disrepute, both in this state and abroad; and that he had wrongfully collected excessive fees, and that by his conduct he had branded himself as a corrupt and unworthy public official.

And the said Fishback did by the said report and by his conclusions therein express to the said governor that he had determined in his own mind and to his own satisfaction that this respondent was and had been guilty of malfeasance and misfeasance in office, and did exhibit therein a condition of mind greatly biased and prejudiced against this respondent, and an enmity towards and to him; and that all the matters and things so set forth in the said findings, from which the said conclusion was so announced by the said Fishback, are the identi-



cal matters and things set forth in the articles of impeachment herein by the House of Representatives aforesaid, as high crimes, misdemeanors and malfeasance in office, as to the guilt or innocence of which it is proposed by the said trial by this court that this respondent shall now be adjudged guilty or innocent, each of the said findings of fact as aforesaid in said report being the basis of an article of impeachment in the articles of impeachment here exhibited for the answer and trial of this respondent as to his guilt or innocence.

That the said Fishback from thence until the present time has many times expressed his abiding conviction of the guilt of this respondent as to the matters and things charged in said articles of impeachment, and that the said Fishback has pre-judged the guilt or innocence of this respondent in relation thereto, has expressed his conviction of the respondent's guilt, and exhibited actual bias and prejudice and personal enmity towards this respondent, and that the said Fishback cannot sit in this honorable court as a fair and impartial judge or member of jury to pass upon any of the questions of law or fact that must be decided by the members of this honorable court in passing upon each of said articles of impeachment, and cannot sit as a fair or impartial judge or juror herein, but will, if permitted to sit for the trial of respondent herein, take with him in said trial such bias, prejudice, enmity, opinion and pre-judgment to abide with him during the trial, irrespective of the evidence, and to influence him and guide his judgment in his final vote upon the guilt or innocence of this respondent, should such vote be required during the trial herein.

#### IV.

The respondent further objects and excepts to the sitting herein as members of this court of each and all of the following named persons, to-wit: A. W. Anderson, senator-elect from the second senatorial district of the State of Washington; Joseph Arrasmith, senator-elect from the ninth senatorial district of the State of Washington; John L. Blair, senator-elect from the twenty-fourth senatorial district of the State of Washington; Ed. Brown, senator-elect from the forty-first senatorial district of the State of Washington; J. W. Bryan, senator-elect from the twenty-third senatorial district of the State of Washington; D. H. Cox, senator-elect from the twelfth senatorial district of the State of Washington; Evan C. Davis, senator-elect from the first senatorial district of the State of Washington; J. A. Falconer, senator-elect from the thirty-eighth senatorial district of the State of Washington; H. H. Fatland, senator-elect from the twenty-ninth senatorial district of the State of Washington; Peter McGregor, senator-elect from the eighth senatorial district of the State of Washington; Charles E. Myers, senator-elect from the fourteenth senatorial district of the State of Washington; Alex Polson, senator-elect from the twenty-first senatorial district of the State of Washington; John R. Stevenson, senator-elect from the tenth senatorial district of the State of Washington; and as well, P. L. Allen, senator-elect from the thirty-third senatorial district of the State of Washington; H. O. Fishback, senator-elect from the twentieth senatorial district of the State of Washington, and W. H. Paulhamus, senator-elect from the twenty-fifth senatorial district of the State of Washington, and who by virtue of their said offices are members of this honorable court, and who each proposes to sit as a member thereof in the trial of this respondent, and to determine therein both the questions of law and fact to be therein determined, and as well the guilt or innocence of this respondent as to the matters and things charged in said articles of impeachment, for the reason that each of said persons and all of said persons

as members of this honorable court and tribunal are disqualified from such membership or from any right to sit in judgment of law or fact therein by reason of his and each of his and all of their bias and prejudice and personal enmity towards this respondent, in this: That heretofore, on the 11th day of March, 1909, the legislature of the State of Washington, by House concurrent resolution number 16, did authorize the appointment of a legislative investigating committee for the purpose of investigating certain offices of the State of Washington, including the department of the secretary of state and insurance commissioner of the State of Washington, upon which said committee, by the president of the Senate and of the speaker of the House appointing and the Senate and House confirming, there was appointed Senator P. L. Allen, of King county; Senator H. O. Fishback, of Lewis county; Representative J. C. Hubbell, of Kittitas county; Representative Howard Taylor, of King county, and Representative W. C. McMaster, of King county.

That thereafter said committee convened in the capitol building at Olympia, Washington, and later did make a written report to the Honorable M. E. Hay, governor of the State of Washington, concerning their investigation of the said department of the secretary of state and insurance commissioner of the State of Washington, together with their purported findings of fact and conclusions in regard thereto, all of which is fully set forth in "Exhibit A," attached to this answer and to which reference is now had and the same made a part of this paragraph, exception and objection of this answer.

That thereafter the said M. E. Hay, governor of the State of Washington, did issue his governor's message convening the legislature of the State of Washington in extraordinary session, and did on the 23rd day of June, 1909, deliver to said legislature, to-wit, to the Senate and House of Representatives thereof, his message wherein and whereby, among other things, he did report to said legislature of and concerning the said report of the said committee as follows, to-wit:

"The findings of that committee bring to light conditions repugnant to the best interests of the state, conditions that cannot longer be tolerated. They contain a serious indictment against the present insurance commissioner of this state and the former secretary of state. The evidence cited in these findings develops the fact that these officials were recreant to their duty, betrayed the trust placed in them and violated every consideration of honor and public obligation that should have regulated their conduct.

"Because of these revelations, one of these officials has resigned his office and the evidence that has been gathered brands the other as unfit to continue in a position of responsibility. There is no denial of the moral obliquity on the part of the accused official—merely the specious plea that the letter of the law has not been violated. In the face of the evidence adduced and the admission of the charges made, one course only appears open to the legislature, which is the removal from office of this delinquent officer. There are two methods open to you by which this official may be removed:

"1. By impeachment proceedings.

"2. By abolishing the office.

"The power of impeachment, which is solely vested in the House of Representatives, is an extremely grave and serious responsibility, not lightly to be exercised or heedlessly invoked. But, when an occasion necessitating such procedure arises, it should be met with firmness, the interests of the individual should be submerged in the interests of the community and deaf ears turned to the sophistry of the corrupt. Such procedure has better application to a case where there are disputed questions of fact as to the guilt or innocence of the officer charged. The other method can be properly applied where the guilt is confessed as in this case.

"I recommend that you pursue one or the other of the above methods as you see fit and deem most advantageous.

\* \* \* \* In the case before you for consideration the course for your honorable body to pursue is as well defined as black from white. The facts are before you. They have been gathered by a committee of your own creating, a committee composed of those who favored and those who opposed this investigation, and the report of that committee is the unanimous verdict of its members."

All of which more fully appears from a copy of said governor's message hereto attached and marked "Exhibit B," and to which reference is now had and the same made a part of this objection and exception to said members of this honorable court sitting in the trial hereof, or in anywise participating in the determination of the guilt or innocence of this respondent.

That said report was received and read by the said persons above mentioned and named as members of the Senate of the State of Washington, and that thereby respondent avers the said M. E. Hay as governor of the State of Washington undertook to say and did say to said members that by the report of the said committee this respondent stood convicted without further trial of malfeasance and misfeasance, high crimes and misdemeanors in office, and should be forthwith and summarily removed from said office without further trial, and that said report should be accepted by said senators as complete proof of the guilt of this respondent of malfeasance, high crimes and misdemeanors; and that in pursuance of said message there was on the 24th day of June, 1909, introduced in the House of Representatives of said legislature a bill and act, commonly known as the Palmer bill, and whereby it was sought by the said House of Representatives to act in accord with the recommendations of said governor's message and to treat this respondent as convicted of high crimes and misdemeanors and malfeasance in office, and to summarily remove him from that office by the abolition of that office, all of which more fully appears from a copy of said bill which is hereunto attached, marked "Exhibit C," to which reference is now had and the same made a part of this exception and objection.

That thereafter such proceedings were had in such House of Representatives that said Palmer bill was passed by a vote of 56 to 34, and immediately transmitted to the Senate of the said legislature, where the same was by the advice, motion and vote in that behalf of each and all of the said senators and persons above mentioned sought to be passed by the said Senate, and that each and all of said persons upon a vote in said Senate to indefinitely postpone said bill did vote against such indefinite postponement, and thereafter by their vote did cause said bill to be referred to the Committee on Public Morals of said Senate; and the bill having been so referred, the said House of Representatives from thence, to-wit, the 24th day of June, 1909, until the 30th day of June, 1909, failed to further proceed towards any consideration of the filing of articles of impeachment against this respondent, but did abate all action in that behalf between said dates; and until said time each and all of the said persons and senators above named, aided, counseled and advised by the said M. E. Hay, governor of the State of Washington, did seek by various means to win over from among the remaining senators in said Senate sufficient votes to accomplish the passing of said Palmer bill in the said Senate, and for such purpose did argue and advance the assertions and statements that it was unnecessary that this respondent be tried upon articles of impeachment, or that any articles of impeachment should be found; but that the respondent was guilty of malfeasance, high crimes and misdemeanors, and guilty of the matters and things reported in the said committee's report, and that he should be summarily removed without further trial, and

had been sufficiently tried and stood convicted; and each and all of said persons above mentioned were at said time, have ever since been and are now so of the fixed opinion of the guilt of this respondent of the matters and things contained in said report of his guilt of malfeasance, high crimes and misdemeanors in office; and that in pursuance of their and each of their policies to pass the said Palmer bill and to abolish the office of said insurance commissioner, they each and all stated and agreed that the said proposed abolition was solely for the purpose of removing respondent from office and of treating him as guilty of the matters and things charged against him in these articles of impeachment without further trial; and they and each of them then, ever since and do now entertain such abiding conviction of the guilt of this respondent in that behalf.

That thereafter between said dates, and on Thursday the 24th day of June, 1909, each and all of said persons so above excepted and objected to, did meet in caucus in the office of the governor of the State of Washington, and did there discuss ways and means whereby other votes of senators in the State of Washington could be accomplished to the support of the said Palmer bill for the sole purpose of removing this respondent from such office by the abolition of the office, and for no other purpose.

And your respondent further avers that all of the matters and things contained in the said report of the said committee, and upon which each and all of the said parties did pre-judge, form and express an opinion as to the guilt of this respondent in relation thereto, are the matters and things and basis of each and all of the articles of impeachment formulated herein.

And your respondent further avers that no attempt was made to formulate the articles of impeachment herein until each and all of the said parties above objected and excepted to had determined the impossibility of passing in the said Senate the said Palmer bill, and had caused such information to be conveyed to said House of Representatives. And your respondent avers that by reason of the mental attitude of each and all of said persons and their acts as aforesaid, that each and all of them have pre-judged this respondent as to the matters and things exhibited against him in these articles of impeachment, and have not only formed but expressed an unqualified opinion as to the guilt of the respondent in that behalf, and that they do now entertain actual bias and prejudice and personal enmity towards this respondent; and that they and each of them cannot sit in this honorable court as fair and impartial judges or members of this court to pass upon any question of law or fact that must be decided by the members of this honorable court in relation to said articles of impeachment, or to act as fair or impartial judges or jurors herein; and that if each or any of said persons be permitted to sit in judgment herein of this respondent that he will then as to such person or persons be pre-judged and convicted without evidence thereunto.

Unfortunately, or mayhap fortunately, but few members of this honorable court have been trained to the law, or have had any occasion to make a study of the rules of its administration; consequently, with a desire that what I have to say may be fully understood and at the same time the legal significance flowing from such statements fully comprehended, I deem it necessary to indulge, so far as the few lawyers who are members of this honorable body are concerned, in statement of matters that are elementary to the lawyer.

As to each and all of these allegations just read, respondent offered in his challenge to produce proof as to the truth thereof.

These allegations and this offer to prove them left open to the managers of the honorable House two courses to be pursued under the law, and under the rules adopted by this honorable court for its guidance in this trial.

The first course was, Should any of the allegations so made against these challenged members, or any of them, be untrue, or deemed by the managers to be untrue, to deny them, thus making an issue to be tried, and thus compelling the respondent making the charges to prove them at the bar of this court.

The other course was, if the charges were true, or deemed true, for the managers to demur to them—that is, to say in answer to them that they do not constitute, although true, any reason why such members should be disqualified from sitting as triers in this proceeding.

It is presumed that these managers and their counsel know the law and that they have acquainted themselves with the facts and have passed in solemn judgment and consultation on the question as to the truth or falsity of the allegations made; and I do not think the presumption is a violent one in this case.

So then, taking up the replication, or reply of these managers and their counsel to this answer made on behalf of these challenged senators, we find that they do not deny the truth of any of these sworn statements that I have just read to you. They admit them and refuse to make issue upon them, but say to the respondent, in legal effect—for such is the rule of the law of demurrer: We admit all of the statements that you have made regarding these senators to be true, but nevertheless we say to you that, being true, they in no wise disqualify these challenged senators or any of them from sitting to pass judgment in this trial.

Thus have they expressed that demurrer in their reply:

Come now Leo O. Meigs, Lester P. Edge, and W. W. Sparks, the managers of the House of Representatives, in person and by W. P. Bell, attorney general, and George A. Lee, assistant attorney general, their counsel, and for reply to the answer of John H. Schively to the articles of impeachment filed herein say:

That the objections to the participation in said trial by certain senators, made by the said J. H. Schively, and contained in paragraphs one, two, three and four of said answer, should be overruled, for the reason that article 5 of the constitution of the State of Washington provides that "all impeachments shall be tried by the Senate," and that there is no provision for any senator being excused or for any person taking his place in the trial of impeachments in case a senator should be excused; and for the further reason that said objections contained in said paragraphs of said answer do not state facts sufficient to disqualify said senators or any of them from sitting in the trial of said impeachment.

In other words, they say to this challenge, It is true, but it cannot be entertained—first, because article 5 of the constitution provides that all impeachments shall be tried by the Senate; secondly, because there is no provision for any senator being excused from participation in an impeachment trial; thirdly, because, admitting all of the facts and allegations in the challenges to be true, those facts and allegations are

not sufficient to disqualify said senators or any of them from sitting in the trial; and this is the issue that confronts this court at this time.

John Schively says: These senators should not try me because they have pre-judged me—have expressed an opinion that I am guilty before they have heard any evidence either for or against me. These senators, through the managers and attorney general, answer John Schively by saying: It is true we pre-judged you and determined upon your guilt before we took any oath to try you, but we are senators, and the constitution says that we shall try matters of impeachment; besides, the constitution does not make any provision for our being excused; and besides all that, the fact that we have pre-judged you does not disqualify us or permit us from doing impartial justice toward you according to the constitution and the laws of the commonwealth and according to the law and the evidence that may be produced, as we have sworn to do.

Gentlemen, your managers may so answer for you; you may perhaps have the temerity after your admission of pre-judgment to so answer; but the law says that you shall *not* so answer. The law says that you are disqualified; the law says that you are not mentally constituted to try this man. Many courts have so announced the law to be, and our supreme court has said in the Barnard case that to admit you to make such claim would be farcical and manifestly wrong, and that the very idea of your so doing must necessarily be excluded by the very expression, "administration of justice."

Before further discussing this question of your disqualification to sit as members of this court, permit me to read to you some cases that have been cited and approved as the law by the supreme court of this state.

[Mr. Israel here read from several decisions of courts of other states and then continued.]

These cases are all referred to in the case of *The State ex rel. Barnard vs. Board of Education*, decided by our supreme court and found in the Nineteenth Washington Reports, at page 9, to which decision I shall presently invite your attention as being the law governing in the disposition of these motions.

It is not a pleasant task to ask any man to probe his own conscience and to condemn himself as unfit to perform a duty or office; and happily it is of rare instance that such course becomes necessary, but in the situation confronting me there is no escaping that responsibility on behalf of this respondent. This court, by fiction of the law, and let us hope in reality, is the highest court that can be convened under our constitution. It is not supposed to be convened in solemn conclave except in the rarest of instances, and the history of our government shows that its powers have been rarely invoked. Many states of the Union have never had occasion or considered it necessary to convene a court of impeachment, but have found the ordinary provisions of the criminal code sufficient to accomplish the punishment of all wrongdoers in or out of office; and, indeed, a glance at the articles of impeachment

here seems to me to demonstrate to any fair-minded person that the convening of this court was not a matter of necessity, was wholly uncalled for, and that if each and every article exhibited in this impeachment was deemed true, that each and all, so far as they can be construed to charge a crime, misdemeanor or malfeasance, could have been sufficiently tried in the courts of our state; that to something else, save necessity, is attributable its being called together. But being called together by the power that may call it, and being convened to sit in judgment, notwithstanding it is the highest of all courts, it is nevertheless as much amenable to the constitution of the State of Washington and to the laws of the State of Washington as is the court of the humblest justice of the peace in all of this commonwealth. Indeed, you have declared in formulating the rules that are to guide this court and govern it in the administration of its offices, that the rules of the common law, save as modified by statute, and as now administered by the courts of this state shall govern in the decision of all questions of evidence and of all interlocutory matters arising during the progress of the trial, whereinsoever they are applicable. Again, before this respondent was brought to the bar of this court to answer these charges exhibited against him, each member of this court solemnly subscribed to the oath provided by your rules in conformity with the direction of the constitution of your state:

I solemnly swear that in all things appertaining to the trial of the impeachment of John H. Schively, now pending, I will do impartial justice according to the constitution and the laws, and according to the law and the evidence that may be produced before this body upon the hearing of such proceeding. So help me God.

Because of this oath, because of the constitution of your state, because of the common law of your state, because of the statute law of your state, because of the decision of the supreme court of your state in its interpretation of those laws, this respondent stands at the bar of this Senate challenging these senators' right to sit in judgment of him as to his guilt or innocence as to any and each of these articles of impeachment that are exhibited against him.

With the administration of that oath and all that attends under the constitution and the law in its faithful performance, each member of this Senate when he took it cast aside his political self, his personal self, and stood and stands in the higher ideal of an impersonal trier of guilt or innocence measured by that constitution and those laws. The moment that oath is taken the question should rise in each individual mind, Am I worthy, am I competent, am I qualified, am I fit, is the condition of mind such that I may perform this duty within my oath?

This motion to disqualify, dismiss and exclude these certain senators from further participation in this trial is for the purpose of searching each individual conscience and measuring, under the test of the law, the legal question as to whether each, all or any *are* legally qualified to be allowed to say to the accused, I am so fit, I am so qualified, when tested by that constitution and by that law. If it is demonstrated that

any are not competent, not qualified under the law, it is the duty of those that are qualified, who are competent, and, for that matter, as well the duty of the disqualified joining with the qualified, to dismiss from further participation such disqualified members. For unless you so do there is no force in your constitution, no force in your law, no force in your oath. Your own supreme court, speaking to this question of disqualification of a member of a legislative body about to try for malfeasance an officer amenable to such body, when one member of such body proposed to sit in judgment upon such accused, though he had previously expressed his opinion and conviction of the guilt of such officer, in the Barnard case I promised to read to you, used the following language:

The principle of impartial disinterestedness and fairness upon the part of the judge is as old as the history of the courts. In fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea running through any pervading the whole system of judicator, and it is the popular acknowledgment of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals. Actions of court which disregard this safeguard to litigants would more appropriately be termed the "administration of injustice" and their proceedings would be as shocking to our private sense of justice as they would be injurious to the public interest.

The learned and observant Lord Bacon well said that the virtue of a judge is seen in making inequality equal, that he may plant his judgment upon even ground.

Cæsar demanded that his wife should not only be virtuous, but beyond suspicion; and the state should not be any less exacting with its judicial officers in whose keeping are placed not only the financial interest but the honor, the liberty and lives of its citizens, and it should see that scales in which the rights of the citizens are weighed should be nicely balanced, for, as was well said Judge Bronson, in *People vs. Suffolk Common Pleas*:

"Next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge."

"The reason that financial interest or near relationship to a litigant is held to be sufficient to recuse a judge, is that it is to be presumed that self-interest or natural affection will unconsciously prejudice a judge and deprive the litigant of a fair trial. This presumption in certain cases may or may not be justified by the truth, but so solicitous is the law to maintain inviolate the principle that every litigant shall be secure in his right to a fair trial, that he is accorded the benefit of the presumption."

But what does the presumption amount to compared with the admitted fact that the judge will not accord the litigant a fair trial; that he will vote to remove him from his office, no matter what the evidence may be? And this, so far as this case is concerned, the demurrer to the affidavit having been sustained, must be considered the fact. To compel a litigant to submit to a judge who has already confessedly prejudged him, and who is candid enough to announce his decision in advance and insist that he will adhere to it, no matter what the evidence may be, would be so farcical and manifestly wrong that it seems to us that the idea must necessarily be excluded by the very expression, "administration of justice."

Thus spake the supreme court of the State of Washington through



the mouth of Justice Dunbar, with the concurrence of the whole court in that case. In that case, as in this, it was charged by the affidavit of the relator that a member of the board of education who proposed to sit in his trial on a charge of malfeasance in his office had expressed a pre-judgment of his guilt before the trial, and he asked in that case of this supreme court that that member of that board be precluded from sitting at such trial; and what I have just read you was the answer of our supreme court to his request, after it had been denied by the board, who were asked, as you are now asked, to search the conscience of that member and exclude him from participating in the trial; and instead, a demurrer had been interposed to the sufficiency of that affidavit and sustained as you are asked to sustain the demurrer of these managers to the charges made by this respondent.

Listen again to your oath: "I will do impartial justice according to the constitution and the laws. So help me God."

Listen again to the words of Judge Dunbar in the opinion just read you: "To compel a litigant to submit to a judge who has already confessedly pre-judged him and who is candid enough to announce his decision in advance and insist that he will adhere to it, no matter what the evidence be, would be so farcical and manifestly wrong that it seems to us that the idea must necessarily be excluded by the very expression, 'administration of justice.'"

Having pre-judged this man, how are these senators now challenged to try him under their oath and do impartial justice according to the constitution and the laws and according to the law and the evidence that may be produced before this body? Judge Dunbar says they cannot.

It is presumed that in the executive of a state of these United States will always be found the embodiment of wisdom, breadth of mind, statesmanship and intelligence above and beyond the sway and smothering influences of the ambitions of petit politicians; immune to the cry of the rabble, or those who would deal in mob violence, who would assassinate private or official character or those who would tear down from high places through hatred or revenge, be such newspapers or individuals. The mental picture of the executive of such a commonwealth is the strong and rugged figure of the able pilot with his hand upon the helm successfully guiding the good ship through and among such hidden rocks and shoals besetting its upward and onward progress. The mental picture of such an executive is one above and beyond the control or influence of petit minds, spite, intrigue, chicanery, enmity or personal revenge. But alas, I, at least, deem that that presumption and that ideal has gone glimmering in the good State of Washington. Woe indeed to that state whose executive department falls into the hands and guidance of one who is willing to curry favor with any set of politicians or to upbuild or accomplish political aspirations by doing the bidding of any newspaper. To realize self-aggrandizement by bowing to the behest of any courtier or fanatics, reformers or bands of "more-holier-than-thou." Woe to

the state whose executive department falls into the hands of any man who would build up by any means a power out of which may come the expectation of self-aggrandizement. Yet me thinks such is the pitiful condition of this state to-day.

It is presumed that the word attorney general of any state of this Union imports a legal adviser and counselor to the officers of that state mentally and legally equipped to advise, and, advising, to see that those officers administer the affairs of that state according to its constitution and according to its laws; that when necessity arises that any of the legal machinery of the state shall be set in motion, that its operation shall be strictly in accordance with that constitution and with those laws; that in no event shall those charged with the administration of those laws be a moment swayed by the prejudices, likes, dislikes, demands or vehement utterings of newspapers or citizens who would in the least forget the law.

This mental picture of such office and such officer excludes pettifoggery tactics, excludes kindergarten methods, excludes, under guise of administration of the law, the hounding of any individual, officer or citizen through newspapers with a fancied grievance to punish; or the vaunting or exploiting of the wonderful legal attainments of any member of such office; or the submitting to newspaper reporters, anticipating through him, future legal steps to be taken and pre-judging and condemning in public print or on the street corner of persons whom the responsibility of prosecuting upon charges or offenses becomes the duty of such office; in aiding or abetting any newspaper or set of newspapers in trying, pre-judging and condemning without legal trial a person accused of crime or offense. Yet when we turn to the record that is before us we find the ideal shattered, the mental picture destroyed, the presumption a paradox. These are bitter words, and I am conscious of the bitterness of them when I utter them, and never would I utter them here or elsewhere did not my conception of this record fully justify them. The things of which I now speak are the matters of this record before this court. They are the exhibits in the answer of this respondent. I am telling no new story when I reiterate, they stand of themselves silent witnesses to a violation of the written and solemn directions of the constitution of the State of Washington as written for the guidance of the governor and attorney general of this state, and violated either purposely or through ignorance. And it were more charitable, I presume, that we say and conceive that it was purposely done rather than ignorantly done. Yet many of the positions assumed in making this record would point to commission through ignorance rather than through purpose. To begin at the beginning. Here is your constitution, written that all may read. The law is that if any officer of the State of Washington is to come under impeachment charges, the House of Representatives shall have the sole power of such impeachment. This is article 5, section 1 of your constitution. Again, all impeachments shall be tried by the Senate, and when sitting for that purpose the senators shall

be upon oath or affirmation to do justice according to law and evidence. Conceive if you can a Senate under oath to do justice according to the law and the evidence if that same Senate is composed of individuals who have already pre-judged the guilt of the accused. Why should the House participate with the Senate in the trial of impeachment? Why, because it was the intention of those who first wrote the constitution and created the constitutional court of impeachment that that court, while yet a part of the legislature, should be protected from bias, prejudice, pre-judgment, enmity, or knowledge gained otherwise than from the evidence given as to the facts charged against the accused. So to the House, to the lower branch of the legislature, was relegated the office of prosecutor, investigator, grand jury, complainant or formulator of indictment or articles of impeachment to be transmitted to the Senate as such court and there prosecuted by the managers of the accusing body.

This being the constitution and this being the law, when there comes a rumor and acclaims that all is not right with a public officer of the commonwealth, that he has been guilty of high crimes, misdemeanors or malfeasance, what should be the procedure to bring under investigation; to bring, if necessary, to trial the accused officer? Why, an investigation by the House of the legislature, either of its own accord or by its committee—it alone under the constitution possessing the power of impeachment. It alone should formulate the charge. It alone should make the investigation. It alone should present its charges against the accused, if it concludes there is evidence to justify them. All of this time and during all of this rumor, and reiteration of rumor, the Senate, the members of the Senate under the constitution, should stand aloof, as the judge upon the bench stands aloof from the rumors of crime in his community, without considering or attempting to gain knowledge of the truth or falsity of the charges, with the expectation and knowledge that if the charges are false they are a matter of idle scandal which is best unknown to them; while if there is a foundation in fact for such charges, they must of necessity finally come to the ear of such senators through the medium of the evidence and witnesses introduced at a trial for impeachment, when they can hear such testimony unbiased and unprejudiced by any formed opinion or pre-judgment gathered from any unauthorized source. Such being the universal rule and condition under the constitution; such being the condition of affairs when the only senator that I exclude from immunity herein, under my charge and challenge as not having been the author of his own disqualification, Senator Paulhamus, introduced into the Senate his resolution calling for the appointment of an investigating committee jointly of the House and Senate to investigate the affairs of the insurance department of the State of Washington, he should have been met at the threshold by the attorney general of the State of Washington with the admonition: "It is not for you to ask such a committee from the Senate of this state; it is not for you to become a participant in any investigation;

it is not for the Senate to participate therein; it is a matter solely for your House of Representatives. Go ye, as an individual, to the members of the House of Representatives; put them in possession of the knowledge that you claim; let a committee from that House make your proposed investigation. For the time will come, if there be any truth in that which you claim should be investigated, that it will be the duty of yourself and your fellow senators to try and determine the guilt or innocence of the officer you claim should be investigated."

Unto all other senators in this honorable body he should have given the same counsel, to the end that at the very beginning of the proceedings that finally lead to these articles of impeachment that you are now about to try the constitution would have been obeyed, the mandates of the constitution followed, and, except as by reason of the further violation of the law of the land before this impeachment and after the appointment of the investigatnig committee, we would not be presented with the spectacle of accusers attempting to sit in judgment. We would not be presented with the spectacle of Senator Fishback and Senator Allen sittng here now to try a man whom they have already by solemn report and conclusion, deduced from facts and sworn testimony taken before themselves, adjudged to be guilty of the offences here charged. It would not have been possible for those gentlemen to occupy that position had the constitution of this state been obeyed. Thus at the threshold incompetency or ignorance or purpose in the office of he who should know the law, who should counsel the law-makers, to whom is delegated the office of advisor of the executive and House bodies, is directly attributable the position occupied by Senators Fishback and Allen. For these gentlemen have become disqualified herein by reason of this violation of the constitutional provision permitted to be done in the face of the constitution, and they aided and abetted by the examination conducted by this very officer, irrespective of anything that those senators did thereafter to further disqualify themselves. They are proposing to sit in judgment as to the guilt or innocence of John Schively, as to high crimes, misdemeanors and malfeasance in office, after they have conducted a court of inquiry for themselves, independent of this trial, and from their inquiry concluded and announced his guilt as to such identical matters, and were aided in so doing by the attorney general's office of this state, either through himself or through his assistants, in a violation of the constitution of this state; undoubtedly through ignorance on the part of these senators, but presumably because he is attorney general and holds a license to practice law, with knowledge on the part of that officer that he was violating the constitution and disqualify these senators to sit in impeachment proceedings while he was so aiding them in conducting the examination made by that joint committee of the House and Senate, and when his duty was to have counseled and advised against the creation of any committee that contained any senator when the purpose of the committee was the investigation of any officer of the state under charge of mal-

feasance, high crimes or misdemeanors. Thus I say to you, gentlemen, Is your first excuse for your disqualification and is the first laying at the door of a person other than yourselves the responsibility for the disqualification that you labor under?

This illegally constituted committee under our constitution finally made its report to the acting governor of this state.

That officer convened the legislature in extraordinary session for the purpose of submitting to it the report of this committee.

Here again was that officer directed by the constitution of the state as to his procedure. Here again came into play his right to be advised by the attorney general's office as to the law, if he did not know it without such advice.

The session was admittedly called to consider the impeachment of John Schively as state insurance commissioner by reason of the report of such committee.

The House and Senate being convened in session, what was the message to each body from that executive?

The constitution and law said to him, Your House of Representatives shall be the sole formulator of all articles of impeachment. Your Senate, when impeachment articles are declared by the House, shall sit as a court to try the accused and determine his guilt or innocence; its members shall at such time be under oath to fairly and impartially try the issues against the accused prosecuted by the House through its managers.

With the constitution and law before him and his attorney general presumably at his right hand, how was he to proceed and be counseled to proceed as governor of the State of Washington, following the law and that constitution?

To have calmly and with dignity by his message informed the House and Senate of the following facts: I have received the report of a joint committee of your bodies created by you in your last regular session for the investigation of the affairs of the offices of certain state officials. The report contains certain findings and conclusions as to the office of the state insurance commissioner which, if true, should, in my opinion, be the subject of investigation by your bodies. To the House of Representatives is given by the constitution the *sole* power of investigating these charges, and, if it deem them true and sufficient, formulating articles of impeachment against the accused officer to be tried by your Senate. To your Senate is given the *sole* power to sit as a court and try this officer upon any impeachment charges that may be exhibited by your House of Representatives to it against this official. I will transmit to the House a copy of your committee's report and its recommendations for its action and subsequent advice to your Senate. As the genius of our institution contemplates that every judicial body when sitting in judgment as to the guilt or innocence of an accused person shall be of such state of mind that it may by all of its members act with fairness and impartially and solely upon the evidence introduced before it, and as well upon oath its mem-

bers to so try, I recommend that your Senate may, so far as possible, stand aloof and without knowledge of the accusations while pending before your House of Representatives until such time as it may be advised of the truth of the charges by the evidence submitted by you to it as a trial body.

And this would have been the message to that legislature, that House and the members of this court, then assembled as the Senate, given by the constitution and the law.

Contrast it with the actual facts—with what was done—and the contrast is the confirmation of my statement that your present disqualification is not of your own creating; but that you stand disqualified today by reason of the executive's willful or ignorant violation of the precepts of the law and the constitution; that your disqualification is your misfortune and not your fault.

Witness the first act of your executive after he has called this legislature into session.

A joint message to the House and Senate, transmitting to each the findings and conclusions of this committee. But this is not enough. He is not content in thus trying in the face of the constitution to inform the Senate in advance of any advise of formal charges from the House, of the things by the committee charged against this official; but he must wittingly or unwittingly, ignorantly or designedly seek to poison the minds of the members of the Senate against the accused in advance of any trial—to assume to himself the right to adjudicate the guilt of this official and condemn him without constitutional trial; to suggest the accomplishment of his destruction without opportunity of trial or hearing of any kind; to crush him literally from the earth and mark him outcast in the face of the inhibitions and safeguards of the constitution; to himself violate the constitution and the law and ask the Senate to be *parte cep criminis* with him in so doing.

Knowing the safeguard of the constitution, which says no officer shall be removed from his office save upon conviction of high crimes, misdemeanors or malfeasance in office, which conviction must only be had after two-thirds of the members of the Senate, sitting as a court of impeachment, under oath to do justice according to the law and the evidence introduced in that behalf, before such court has voted "Guilty" against the accused—what says the executive to this Senate?—

There is no denial of the moral obliquity on the part of the accused official—merely the specious plea that the letter of the law has not been violated. In the face of the evidence adduced and the admission of the charges made, one course only appears open to the legislature, which is the removal from office of the delinquent officer. There are two methods open to you by which this official may be removed—

1. By impeachment proceedings.
2. By abolishing the office.

Impeachment has better application to a case where there are disputed questions of fact as to the guilt or innocence of the officer charged. The other method can be properly applied *where the guilt is confessed, as in this case.*

Thus does M. E. Hay, acting governor of the State of Washington, rise above and declare himself superior to the constitution of the state. Thus in the face of the constitution, which declares that no man shall be bereft of his office save upon a vote of two-thirds of the senators assembled in the Senate, sitting as a court of impeachment, adjudging him guilty, after a fair and impartial trial, under evidence introduced before them, M. E. Hay would, by a majority vote of such Senate, with the senators not under oath to do equal and exact justice, deprive an officer of his office by abolishing that office, without proof of any guilt to those so abolishing it, save the opinion of M. E. Hay as to such guilt rising to the dignity of proof to a moral certainty and beyond a reasonable doubt. His reasons assigned in courting such action and such violation of the constitution are not the non-necessity of the office, but rather the sacrifice of an eminently necessary office to the people of the state for the accomplishment by indirection of that which he fears may not be accomplished by direction; the invoking of a cowardly subterfuge to the destruction of the fair fame and honor of a citizen of the state. Having counseled this condemning of a man without constitutional trial, witness the attempt to abolish that office by the use of the Palmer bill; witness the political intriguing, lobbying and caucusing of the whips of that executive in an attempt to force the passage of that bill in the Senate; witness the caucusing of these challenged members in the office of that executive to pledge themselves to the passage of that abolition bill; witness the actions of these challenged gentlemen upon the floor of the Senate in their attempt to pass that bill; witness the actions of these gentlemen upon the floor of the Senate in successfully preventing the indefinite postponement of that bill, and witness the legal effect of all this upon the integrity of these challenged senators—not as men, for as men they would stand above reproach, but as judges. As judges their integrity has been destroyed by this meddling politician. They have been committed by him to an irrevocable, fixed and expressed opinion of the guilt of John H. Schively to a moral certainty and beyond a reasonable doubt of a guilt that of necessity accomplishes his removal from office and marks him for dishonor. They have even attempted to put their pre-judgment into execution and to remove him from office. Had they had their will, no impeachment proceedings would now be pending in this august tribunal; but Schively, without the benefit of constitutional trial, would have been dismissed from his office and dishonored by their votes expressing their fixed opinion and pre-judgment of him and their judgment executed. Yet we are asked that these men now still sit to do that which they before deemed unnecessary—to now pass upon the question of the guilt or innocence of John H. Schively, after they have irrevocably attempted to declare his guilt of the same charges that they now propose to participate in the trial of. You challenged gentlemen must see in the mirror thus held up to your gaze your utter disqualification to act as judges in this court, and the farce of it all, if you are permitted so to do. You

must see with me also that your disqualification has been brought about and rounded out, not of your own acts, but by reason of you having permitted yourself to be dominated by this violator of the constitution, and in an attempt to do his behests and permit him to elevate himself through the buoyancy of his egotism above and beyond the constitution of this state. As we contemplate this picture and condition, again the words of justice Dunbar, declaring the rule as to who are competent judges echoes in our minds.

Gentlemen, I again declare your absolute integrity as men, your absolute worth as the peers of all good citizens in the State of Washington, but I still point to you that you are not worthy as judges notwithstanding, by reason of those conditions and your past expressions of the guilt of this man, to sit in judgment over him.

You may think you are able to say to yourselves, I can forget all that is past and try this man fairly and impartially and solely under the evidence that will be brought in this trial; but the concentrated wisdom of ages, the rule of the law distilled therefrom, says to you, no matter how honest your opinion in that regard may be, You are mistaken; the law is, that under such circumstances you cannot be impartial; the law is that you shall not attempt to be; the law is that you are discredited to such an office; such rule of law is a necessity of our civilization to the safeguarding of our liberty, our honor, our property, our freedom, our lives, and to that law and to the maintenance of the integrity of our courts you must bow and withdraw from any attempt under these conditions to sit in judgment in this case or to attempt to adjudicate the guilt or innocence of this respondent.

It has been said to me that I should not say these things to you. It has been said to me that it were the judicial suicide of my client to give expression to these thoughts. It has been said to me that the words that I am uttering must of necessity so rankle in the hearts of the challenged members of this body that the very recollection of them must of necessity obscure a calm judgment and cause the condemning of my client, but I say no unto such arguments.

If holding up a mirror to the reflection of the inner conscience of any man is to invite his anger, hatred and revenge, then such a one as he would be as fully or more fully dominated by the same passions without it having been done.

I have not yet lost sufficient faith in the innate honesty of the average man not to believe that a sufficient number of you, if not all of you, who are challenged by these objections will, should it be necessary to sustain the ruling of his honor here presiding, upon this motion vote with the remaining members of this honorable body for your own exclusion and disqualification under this challenge. I have not yet so lost my belief in the innate honesty of the average man not to believe that when you confront yourself with the condition of your mind toward this respondent, with your past acts towards him and with the view the law takes of the effect of such pre-judgment upon you as affecting your right to participate in the trial, that you will vote to sus-



tain his honor, if it becomes necessary, for your own exclusion from further sitting in this trial by reason of the law, by reason of your oath and by reason of the concepts of common honesty. And I am more firm of that opinion because of the realization that your present attitude towards this respondent, your present bias, your present enmity, your present pre-judgment of his guilt have been thrust upon you, and all made possible through a misguidance of the administration of the affairs of this state by those who should have known better.

Had the constitution been followed, had the law pertaining to impeachment been obeyed, had the slightest consideration for equitable, honest, impartial, clean and pure administration of justice been sought in the premises, none of you who are now challenged members of this honorable court would be disqualified or subject to challenge. The fault is not yours; the responsibility must be placed elsewhere, and I have invited your attention to the constitution, to the law and to this record in proof of the fact that each of you have been disqualified and are now disqualified and in the position to exclude the idea, in the language of our supreme court, that you would be encompassed in the expression "administration of justice."

True, that the exclusion has been accomplished through the blundering of others than yourselves, and an utter disregard of the constitution and laws of the commonwealth. And such being the case, all is yet excused to you, without you now burn your bridges behind you and with full knowledge and contemplation of the situation in which you have been placed, conscious of your incompetency under the law, nevertheless attempt and do the farcical and manifest wrong attempted in the Barnard case.

That John H. Schively incurred the displeasure of the editors of great newspapers in the state of Washington, or that such newspapers sought his political death, or would accomplish it at the cost of his fair fame and honor, are not questions for discussion on the argument of this motion.

That such newspapers placed him on trial before the people of the State of Washington and themselves furnishing such detached parts of real evidence as they conceived would reflect against him, coupled with deluges of innuendo, assertions, suspicions and baseless rumors to the building of a fabrication fair to look upon but founded upon shifting sand, with which to declare John H. Schively tried, found guilty, and condemned, is not pertinent to this argument save as it may have been an instrument in the hands of those who have by their meddling and machination worked the conditions that result in the disqualification of those challenged gentlemen to sit in judgment in this trial.

Nevertheless, such newspaper trial and condemnation has been had in this case, and its verdict accepted and used by the executive of this state in aid of his attempt to whip this respondent out of his

office; to destroy his honor and fair fame, to deprive his family of the means of sustenance, and all without trial and without hearing.

The people may at times be slow to learn or discover the truth, but, be it crushed as it may, they ultimately take heed, ultimately hear its voice, ultimately recognize a wrong done; and on that day and at that hour terrible is the punishment meted out to the perpetrator of the wrong. Such is the history of the retributive justice of the people, whether measured to despot or offending servant of their election.

You may refuse to retire from further participation in this trial after having had pointed out to you your disqualification to act as judge and trier. You may persist with your pre-judgment of this respondent to the accomplishment of the farcical "administration of injustice" declared by Judge Dunbar from the bench of your supreme court as I have read it to you. You may strip this man of his office and brand him with dishonor and infamy by reason of your pre-judgment of him without trial and upon the unsworn statements of others and at the behest of a meddling executive, as you tried to do when you supported the Palmer bill for the abolition of his office while the office was an admitted necessity to the orderly administration of the affairs of this state, and the only purpose of the bill an attempt to destroy John Schively, without trial, because certain newspapers and certain politicians and a certain executive desired his destruction.

You *may* do all this; yet in my heart I cannot believe you will.

Politics seem to sanction the doing of many things in the accomplishment or perpetration of party power or the dominating of political situations that would be viewed askant when measured by the rule of individual standard. I am not here to defend or to deprecate political trickery. To the people is delegated the punishment of political acts they deem reprehensible. It may be that it is right and fair in our civilization to tear down and destroy power in and emoluments to a person by political intrigue—for such tearing down and destruction does not involve the personal honor of the vanquished. But when it comes to the tearing down and destruction by judicial means, by the sitting in judgment of man over his fellow man, when such vanquishing of the individual on trial means as well berefting him of honor and branding him as an outcast among his fellow men, our sense of justice demands that his trier, his vanquisher, be not only under solemn oath to do impartial justice, but that the condition of his mind and thought towards the accused be impartial—that he be so equipped as to be able in fact to do that which he has sworn that he will do; that no partisan feeling, no feeling of enmity, no feeling of prejudice, no feeling of pre-judgment can possibly enter into a consideration of the guilt or innocence of the accused.

The law, which is only after all the crystallized experience of man since the dawn of civilization reduced to rule, has declared what that condition of mind must be in order that the judge and trier of his fellow man may be deemed fair and impartial. The courts have de-

clared when that law declares by its rule that it will be conclusively presumed that the proposed trier's mind is not in such a condition.

Your own supreme court has spoken that law to you in the Barnard case.

It were vain for these honorable managers or their counsel from the office of the attorney general, or even that great lawyer himself, to stand here and tell you, after they have solemnly admitted for you at the bar of this court that all the bias, prejudice, enmity and pre-judgment alleged against you is true; after they have refused to allow you to in any wise deny or question such charges so made against you, that you are qualified and entitled to sit in judgment over this man, notwithstanding; that you are, or can be, or that the law recognizes you as fair and impartial judges, or the members of a fair and impartial court. They may say so. The attorney general may say so. But the law says you are not. Your supreme court has said that you are not. Your hearts should tell you that you are not. Your oaths as judges tell you that you are not. And persist if you will, in the face of the law and in the face of this challenge, but when you have accomplished the most you are permitted to accomplish unto this respondent, then I prophesy that in the still hours of the night, in the sole presence of self and God, your conscience will rise up as your accuser of a violation of the law of the land, and an oath of office under the constitution, accomplished by the whip of an over-zealous executive and his seducing you to a partisan act, while clothed in judicial ermine and sworn to impersonal action, thought and feeling.

You may sit as judges in name, but you can not sit as judges in truth and in fact, as the law has declared the true judge must be constituted.

Your disqualification is not a matter of argument; it is a self-evident truth that no amount of argument can destroy. Let the gentlemen on the other side say what they will in answer to this. I hold my peace unto it all save to again, when they are done, ask the simple questions:

Under the law, whom are fair and impartial judges?

Under the law, what is the qualification as to bias, enmity, prejudice, or pre-judgment to be had in the fair and impartial judge?

Under the law, how rank these challenged gentlemen as fair and impartial judges when measured by the facts of bias, prejudice, enmity and pre-judgment you have admitted against them?

And again, truth and the law answers, They are disqualified.

BY MR. MANAGER SPARKS: *Mr. President and Gentlemen of the Senate*—In replying to the argument of counsel that sixteen members of this body are disqualified from sitting as members of this tribunal, we should determine in what capacity you are acting—whether as a court or as a Senate, and at the outset it is pertinent to ask, Is the body now sitting as a court or is it a Senate?

If you are sitting as a court in any manner distinguished from a Senate, then I agree that there is some weight in counsel's argument

and that much that he has said is true, and that the common law rules and precedents should be followed; that your interests or preconceived opinions may be objectionable and that the accused may claim the benefit of the rules laid down in criminal procedure.

But is it true that this is a court? Are we engaged in a trial wherein we may punish the accused? Has this tribunal any of the attributes of a judicial court? What does the constitution say? What are the provisions in that supreme law which alone must govern us in this as well as in all impeachment proceedings? Is there a word, phrase or sentence which leads, or can lead anyone to believe that this is a court, or endowed with any of the powers of a court? There is not, except you construe the clause which provides that in the impeachment of the president of the United States the chief justice shall preside, and there was a good reason why that provision was made. If this is a court, to be governed by the rules established by judicial procedure, then you, by your verdict, might punish the respondent, but you cannot do that. In early times in England, where the House of Lords sat as the sole triers in impeachment trials, they had power to not only remove the accused from office, but could inflict upon him such punishment as they deemed the case merited; they had power to deprive him of his property, his liberty or even his life, and hence they were denominated a court. But under our national and state constitutions it is different. Our constitution plainly provides that conviction under impeachment can go no further than removal from office and taking from the accused the right to hold office thereafter.

Again, if this were a court, it would have been so declared in the constitution, which provides that "judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace and such inferior courts as the legislature may provide," and from this I must conclude that this is not a court, but a Senate, convened as a Senate, to try John H. Schively upon the charges preferred by the House of Representatives in the articles of impeachment filed herein; and if you are not a court, then the procedure by which you will be governed and the precedents that will guide you will be those adopted in trials by impeachment and not legal or court procedure, and all that counsel has said is irrelevant and has no bearing upon the case.

Our constitution provides that the House of Representatives shall have the sole power of impeachment, and "*all impeachments shall be tried by the Senate.*" Being convened as a Senate, you are a constitutional tribunal, bound by no law which may limit you, save such rules as you have or may hereafter adopt; you follow no precedents save those of the law and customs of parliamentary bodies; your duty is not to punish or inflict punishment, but to ascertain and determine whether John H. Schively, by reason of high crimes and misdemeanors, or malfeasance in office, is longer fit to retain the office of insurance commissioner of the State of Washington, and in determining that you are a law unto yourselves, bound by the natural principles of equity and justice.

Now, gentlemen, being a Senate, and sitting as a Senate, can one senator deprive another of his seat, except in a contempt proceeding? Have not your constituents some interest in this matter? Were you not elected to represent them in all matters coming before this body?

If the framers of our constitution had intended that any of you were subject to challenge, would not they have provided some way by which such vacancies might be filled? If sixteen members of this honorable body may be unseated on motion of the respondent, may not others be removed and debarred from sitting, upon motion of the managers, and if this be done, or could be done, would not the accused escape justice? By such methods the Senate could be dissolved.

No, gentlemen, this is not a court; you remain the Senate. One cannot say to another, "You cannot sit"; the constitution gives you no such right. It is not only your right but your sworn duty to remain, and to perform your duty to the state at large and more particularly to the district you represent—to sit and act in this matter the same as you would upon any other matter coming before the Senate. Remember that each senator's seat and vote belongs to his constituents, and not to himself, to be used according to his best judgment in all cases as they arise. This being a political matter, a question in which every person in the state is interested, is it not your right, yea, your duty, to discuss it, and to form opinions of the guilt or innocence of the accused? You are here to act in a representative capacity, the same as you would or should act in a private or individual capacity, acting for the best interests of the state.

Now, as I stated, this is a legislative, or rather a parliamentary proceeding—a proceeding in which we must be governed by the rules and customs adopted in former impeachment proceedings; and if we are to be guided by such precedents, then I challenge counsel for respondent to cite a single instance in all the history of England where a member of the House of Lords was disqualified or unseated by reason of his favor or malice, affinity or interest.

That a member cannot be unseated was early determined. In the trial of Belknap and the other judges in 1388, the House of Lords resolved, "That these matters, when brought before them, shall be discussed and adjudged *by the course of parliament*, and not by the civil law, nor by the common law of the land used in other inferior courts"; and that rule has prevailed for nearly 600 years, and remains the unquestioned law of England today, and the right of challenge is denied to both parties, and a long list of authorities might be cited in support of our contention.

In the case of the Duke of Somerset (1 Howell's State Trials, p. 521) it was held that the Duke of Northumberland, the Marquis of Northampton, and the Earl of Pembroke should sit in judgment upon him, against the objection of the accused, because "a peer of the realm might not be challenged," and in that case the Duke of Somerset was charged with an attempt upon the lives of the three members challenged. That trial occurred in 1551.

Again, the Duke of Northumberland, Marquis of Northampton, and Earl of Warwick (*ibid*, 1 State Trials, p. 765) being on trial for their lives in 1533, before the court of the Lord High Stewart of England, it was decided that one equally culpable in the crime could sit, as they were "nevertheless persons able in the law to pass upon any trial, and not be challenged therefor."

In the trial of the Earls of Essex (1600) (*ibid*, 1 State Trials, p. 1335) the same ruling was made.

In 1631, in the case of Lord Audley (*ibid*, 3 State Trials, p. 402) it was questioned whether a peer might not challenge his peers as we challenge jurors in a judicial procedure, and it was decided without a dissenting voice that "he may not"; and this case is important, as Lord Audley was not being tried for a political offense, but for being accessory to rape upon his own wife. The same ruling was made in the case of the Countess of Essex on trial for treason. (Moore's Reports, p. 621).

In the Earl of Portland's case (1701) (*ibid*, State Trials, p. 288) the commons objected to Lord Sommers, the Earl of Oxford, and Lord Halifax, who had been impeached by the commons before the House of Lords for being concerned in the same acts for which Portland was being brought to trial, voted and acted with the House of Lords in the preliminary proceedings of said trial, and were upon a committee of conference in relation thereto. After discussion, the lords decided "that no lord of parliament impeached of high crimes and misdemeanors can be precluded from voting on any occasion, except on his own trial."

In the celebrated trial of Warren Hastings, no challenge was made, although of the more than 170 peers who commenced the trial but twenty-nine sat and pronounced judgment at the close, and even some of these were created peers subsequent to the beginning of the trial, and had not heard either the opening statement or but little of the evidence; that during that trial there had been more than 180 changes in the House of Lords, by reason of death, succession and creation, and *they were not challenged*, as those able lawyers well knew that such right would be denied them, as it was a parliamentary and not a judicial tribunal.

But we need not look to England and the parliamentary rules and customs of the House of Lords for our guidance; we find that under our own constitution the same rule has been followed, a few cases of which I now challenge your attention.

Judge Pickering, in 1804, was impeached by the House of Representatives of our national congress for drunkenness in office. In that case, after filing the articles of impeachment, the trial was postponed until the next session of congress, and during the interim three senators—Samuel Smith, of Maryland; Israel Smith, of Vermont, and John Smith, of New York—had been elected to the Senate. They were at the time of the adoption of the articles of impeachment members of the House, and there voted in favor of the impeachment of Judge Pickering.

Senator Smith, of New York, raised the question and asked to be excused from voting. Senator Smith, of Maryland, declared he would not be influenced from his duty by any false delicacy; that he for his part felt no delicacy upon the subject; that the vote he had given in the House to impeach Judge Pickering would have no influence upon him in the court; his constituents had a right to his vote, and he would not by any act of his deprive or consent to deprive them of that right, but would claim and exercise it upon this as upon every other question that might be submitted to the Senate while he had the honor of a seat.

At that time the question was ably discussed by no less able statesman than J. Q. Adams, and after discussion was decided by the decisive vote of 19 to 7, and these gentlemen sat and voted on every question that arose during that impeachment trial.

In the trial of Judge Samuel Chase (1804) no challenge was made, although the case was decided by an almost strict party vote, when partisanship was at high ebb, and there could be no doubt that many of the senators had formed, if they had not expressed, opinions as to his guilt or innocence. Ben Butler, one of the managers in the trial of Andrew Johnson, in speaking of this Chase trial, and when upon this subject, said: "That arbitrary judge, but learned lawyer, knew too much to attempt any such futile movement as a challenge to a senator." That was a political trial, and certain it is that if a challenge had been made and allowed upon the part of either party, the other side could have made a challenge upon the same grounds to the remainder.

In the Chase trial the managers did not attempt to exercise the right of challenge, although Senators Smith and Mitchell, of New York, who had been members of the House and voted against impeachment, sat in the Senate and voted "guilty" on every article. These managers were John Randolph, Early Boyle, Clark Rodney, Nicholson, and Campbell, who stood high in the legal profession and were recognized as among the ablest lawyers of the land. These able lawyers well knew that a challenge to any senator not only would but should be denied.

Judge Peck's trial, in 1831, is the next case tried before the United States Senate, and that furnishes another instance in point. Judge Peck's conduct had been talked about for more than four years prior to filing articles of impeachment against him; this conduct had been common knowledge—in fact it had been before congress for that length of time. The subject had been publicly discussed; there were but few who had not formed and expressed an opinion as to his guilt or innocence; and especially this must have been true of most, if not all, of the senators, and yet no challenge was offered by that good lawyer; nor did the managers challenge, although Daniel Webster was a member of the committee of the House of Representatives to whom the petition for impeachment was referred and was known to favor the accused. Sprague, of Maine, and Livingston, of Louisiana, were occupying seats in the Senate, all of whom had been members of the House, Sprague voting against the proceedings and Livingston for them.

These gentlemen sat upon the trial and voted as they had in the House.

Thus stands the case upon authority, and many other cases might be cited. In fact, there is not a solitary instance of record of impeachment trials either in England or America where counsel's arguments are sustained by the facts; and if that has been the rule in the past, is it not so now? Has John H. Schively anything to fear, if innocent? Remember that our constitution plainly provides that two-thirds must agree that he is guilty, before a conviction can be had.

No, gentlemen, you are not acting as a court, but rather you are sitting as a grand inquest, wherein by your votes you are to purge the State of Washington of an unworthy and inefficient official. The question for you to decide is not, "Shall he be punished?" but "Is he fit or worthy to hold a public office?"—and this, I contend, you are competent to do. Your interest in this matter is not as great nor does it compare with many of the cases cited; and if they sat, so may you.

BY MR. MANAGER MEIGS: *Mr. President and Gentlemen of the Senate*—From the time I first appeared before this tribunal I have entertained the opinion that this is the highest court which can be convened in the State of Washington, and entitled to the respect of all persons who may come here. I am simply astounded, therefore, at the unseemly and indecent tirade by counsel for the respondent to which we have listened during the past three hours. Parties who have no connection whatever with this case have been dragged in here and subjected to not only unwarranted criticism but the grossest of insults, and for no other purpose, it seems to me, than to befog and conceal the real issues which you have been called together to consider.

Mr. President, we are not here to wave the bloody shirt. We are not here to try Governor Hay, or to pass upon the wisdom or expediency of his policies. We are not here to try this cause upon the reports of legislative investigating committees, stories of the street, or newspaper rumors, but upon the law and the evidence. And notwithstanding the adoption by counsel for respondent of a practice often employed in the petty criminal courts of the land, and with which he is evidently familiar, we propose to try none other than this respondent, and to fix your attention solely upon his alleged delinquencies both in and out of office.

Now, let us look into some of the statements made by counsel which have a bearing upon this case. He says that by demurring to respondent's answer we have admitted that you are prejudiced and unfit to sit in the trial of this cause; but notwithstanding this, we propose that you, having the power to determine this matter in your own favor, shall do so, and shall continue to sit in judgment upon this man, irrespective of your unfitness so to do. This argument may appeal to some of the laymen constituting this tribunal, but by the lawyers sitting here it can be considered as nothing more or less than buncombe. He who for three hours has harangued about the deception and dishonesty of individuals who have no connection whatever with this case would mislead you by stating a fiction for a rule of law.



But let us see where his argument leads him. His rule must work both ways, and when you remember that the respondent has demurred to practically each and every one of the twenty-six articles, where does it leave the respondent? The logic of his eminent counsel admits of but one answer: the respondent stands before you under a confession of guilt as to every article to which he has interposed a demurrer. The contention is so ridiculously untrue that to state it is to argue it.

And now a few words in conclusion, with reference to a case overlooked by Manager Sparks.

In the impeachment of Judge Barnard the same contention raised here was made in the respondent's behalf, as a result of a request by one of the judges sitting in the cause that he be excused from participating in the proceedings, he having been engaged as counsel in certain matters of litigation before Judge Barnard out of which the articles of impeachment grew. William A. Beach, arguing for respondent, said:

I desire to say on behalf of respondent that he has a delicacy about being tried by a court any of the members of which have participated in any of the transactions which are to be examined into, in the charges against him. Without having the slightest objection to either of the justices who from motives of delicacy have asked to be excused, he only feels that it would be indecorous and highly unjust to him and to the people of this state if they should participate in the trial of a charge in which they were personally interested, and from the very nature of the case they have inspired prejudices which would be favorable to one side or the other. \* \* \* One of them has been a counsel in matters of litigation before Judge Barnard out of which these articles have come. The other has been engaged in the Susquehannah litigation and has been officially and judicially engaged in other matters, and has been in direct judicial, if not personal, antagonism to respondent in this case. \* \* \* It has been suggested that it is perfectly right for him to sit upon one of the articles in which he has not been interested, but I venture to submit that this court is a unit and these articles of impeachment are one indictment, and if a member is incompetent to sit upon one of the articles he is equally unfit to hold his position at all. (1 Barnard Imp., pp. 80-81).

I will not take the time to read the argument of the several managers who replied to Mr. Beach, but will direct your attention to the fact that the controversy resulted in the refusal of the Senate to excuse Judges Allen and Peckham. (1 Barnard Imp., p. 82).

And it seems to me that every principle of reason and logic can be urged in support of this view. Suppose the respondent in this case to be answering to this Senate for an offense committed under conditions so open and notorious that every member of the Senate entertained a conviction of guilt before the trial, and in fact had gone so far as to publicly express the same. The constitution, you will bear in mind, requires that two-thirds of your number shall be necessary to convict. Now, is it to be argued for a moment that the respondent could successfully challenge this entire body, or a sufficient number thereof, to prevent his impeachment under such conditions? The whole matter seems grossly absurd when discussed in connection with an extreme case;

but it is no less absurd in connection with the contention made in this case. The principle is the same, and it is contrary alike to the theory and history of impeachment.

At 4:45 p. m. the Senate, sitting as a court of impeachment, took a recess until tomorrow morning at 10 o'clock.

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SENATE CHAMBER,  
OLYMPIA, WASH., August 12, 1909.

The Senate resolved itself into a court of impeachment at 10 a. m., President Ruth presiding.

BY ATTORNEY-GENERAL BELL: *Mr. President and Gentlemen of the Senate*—It is the contention of the managers that no senator is disqualified from sitting in the trial of this case. My colleague, Brother Sparks, has shown by numerous instances that a member of the House of Lords could not be challenged in an impeachment trial. And it has been further shown that the Senate either of the United States or of a state, sitting in an impeachment trial, is governed by the same rules that obtain in like proceedings in the House of Lords. As he stated, in the case of the Duke of Somerset it was held that the Duke of Northumberland and the Marquis of Northampton and the Earl of Pembroke, for an attempt upon whose lives Somerset was on trial, should sit in judgment upon him against the objection of the accused, because "a peer of the realm might not be challenged." Again, the Duke of Northampton and the Earl of Warwick, being on trial for their lives before the court of the lord high steward of England, one of the prisoners inquired whether any such persons as were equally culpable in that crime and those by whose letters and commandments he was directed in all his doings might be his judges or pass upon his trial at his death. It was answered that "if any were as deeply to be touched as himself in that case, yet as long as no attainder of record were against them, they were nevertheless persons able in the law to pass upon any trial, and not to be challenged therefor, but at the prince's pleasure." Again, on the trial of the Earl of Essex and Southampton for high treason before all of the justices of England, the Earl of Essex desired to know of my lord chief justice whether he might challenge any of the peers or not. Whereunto the lord chief justice answered, "No." Again, in Lord Audley's case, it was questioned whether a peer might challenge his peers as in the case of common jurors. It was answered by all of the judges, after consultation, "He might not." The same was ruled in the Countess of Essex' case on trial for treason. In the Earl of Portland's case, the Commons objected that Lord Somers, the Earl of Oxford and Lord Halifax, who had been impeached by the Commons before the House of Lords for being concerned in the same acts for which Portland was being brought to trial, voted and acted

with the House of Lords in the preliminary proceedings of said trial, and were upon a committee of conference in relation thereto. But the House of Lords, after discussion, solemnly resolved "that no lord of parliament, impeached of high crimes and misdemeanors, can be precluded from voting on any occasion except on his own trial." In the trial of Warren Hastings the same point was taken for granted, for of the more than 170 peers who commenced the trial but 29 sat and pronounced the verdict at the close, and some of these were peers created since the trial began and had not heard either the opening or much of the evidence, and during the trial there had been by death, succession, and creation more than 180 changes in the House of Peers, who were his judges.

It can thus be seen that in the House of Lords a challenge cannot be sustained, and by analogy we insist that a senator sitting in an impeachment trial cannot be challenged.

When senators are sworn to try an impeachment, each one is sitting as a judge and not as a juror. Each one passes on the sufficiency of the evidence, upon the law and upon the facts in the case; and we maintain that such senators cannot be challenged for any cause except one for which a judge might be challenged, if, indeed, he can be challenged at all. But even granting that a senator could be challenged for the causes for which a superior judge can be challenged, the respondent has not shown any such cause in this case.

Section 4295 of Pierce's Code provides as follows:

A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he is a member in any of the following cases:

(1) In an action, suit or proceeding to which he is a party, or in which he is directly interested.

(3) When he is related to either party by consanguinity or affinity within the third degree \* \* \*

(4) When he has been attorney in the action, suit or proceeding in question for either party \* \* \*

In *Tibbs v. Atlanta*, 53 S. E. Rep. 812, the court says:

Prejudice or bias on the part of the judge, not based on interest, nor on any other ground not named in the statute, exhibition of personal feeling or unnecessary expression of opinion upon the justice or merits of the controversy, are as a general rule not assignable as a ground for disqualification. While the use by one who is to preside in a case of expressions indicating bias or prejudice against a party are exceedingly indecorous and improper and reprehensible, and calculated to throw suspicion upon the administration of the law, in the absence of statute they cannot be made the ground of disqualification.

In Vol. 17, Am. and Eng. Ency. of Law, p. 740, it is stated as the law that the statutory grounds of disqualification for a judge are exclusive.

In re David Jones, 103 Cal. 398, it was held that:

The only disqualifications for a judge are those (Sec. 170) by which he is disqualified when he is a party to or interested in the action pending; when he is related to either party, or his attorney, within the third

degree, and that he has been attorney for either party in the action. "These are the only cases which work a disqualification of a judicial officer" (McCauley v. Wells, 12 Cal. 524). Bias or prejudice on the part of a judge is not a ground for a change of the place of trial.

In *Patterson v. Conlan*, 123 Cal. p. 453, it was held that—

A police judge is not disqualified to act upon the preliminary examination of a defendant charged with a felony, merely because he has formed and expressed a fixed opinion as to the merits of the case. \* \* \*

In *Taylor v. Williams*, 26 Texas 583, the court say:

The "interest" which disqualifies a judge from sitting in a case does not signify every bias, partiality or prejudice which he may entertain with reference to the case, and which may be included in the broadest sense of the word "interest" as contradistinguished from its use as indicating a pecuniary or personal right or privilege in some way dependent upon the result of the cause.

In *State v. Moore*, 121 Mo. 514, the court held that—

A trial judge can only be disqualified from sitting in a cause by reason of the existence of some one or more of the causes mentioned in Sec. 4174, Rev. Stat. 1889, and by a compliance with its provisions. He might not be disqualified by the defendant charging him in the presence of the jury with being prejudiced against him.

In *Montana, in re Davis' Estate*, 27 Pac. 342, it was held that under "Sec. 110, providing for the transfer of proceedings in matters of probate to another county when the judge is 'disqualified to act from any cause,' relates only to statutory disqualifications existing at the passage of the act, and does not include the ground of the judge's prejudice."

In *McDowell v. Levy*, 8 Pac. Rep. 857, the court say:

Bias or prejudice on the part of a trial judge constitutes no legal incapacity to sit on the trial of the cause.

In *Sjorberg v. Norden*, 5 N. W. Rep. 677, it was held that—

The only cause of disqualification reached by section 4, title 1, chapter 64, Gen. Stat., is a pecuniary interest in the event of the action to be tried. Sec. 19, Chap. 116 of Gen. Stat., as amended by Sec. 1, Chap. 24 of Gen. Laws 1878, has no application to district judges. \* \* \*

A pecuniary interest in the event of the action is the cause of disqualification intended to be reached in the section, and not a mere bias resulting from partiality or prejudice in favor or against either of the parties. That this is the true construction of the statute is made reasonably certain by the provision of the section that immediately followed. The other provision refers to the disqualifying clause mentioned in the preceding portion of the section as such interest, and the like guarded language is used in the clause which reserves to the disqualified judge a power to order a change of venue upon a proper showing of such interest on his part.

It is stated in 15 Am. and Eng. Ency. Law, p. 1064, that—

A member of the House voting for the prosecution of an impeachment is not thereby rendered disqualified if subsequently elected to the Senate from sitting on the trial thereof.

Then, why should a senator who has made investigation of the charges be disqualified?

In *Doherty v. Board of Police Commissioners*, 32 N. Y. Supp. p. 19, it was held that—

It is not error for a commissioner to sit on the trial of charges against a policeman after he has been challenged on the ground that he is prejudiced against the accused, and does not intend to give the policeman a fair trial, it not being claimed that such commissioner had any interest in the matter or was disqualified by statute.

In several New York cases it has been held that on the trial of an officer by a board of police commissioners testimony may be taken before one and afterwards submitted to and acted on by all; a change in the constitution of the board does not invalidate a removal made by the new board (see *State ex rel. Gilhooley v. Board of Police Commissioners*, 23 Hun. p. 361; *People ex rel. McCarthy v. Board of Police Commissioners*, 98 N. Y. 332; and, also, 99 N. Y. 676).

In his contention that the senators named are disqualified, and that they should be excluded from this trial, the learned counsel for the respondent has cited the case of *State ex rel. Barnard v. The Board of Education*, 19 Wash. p. 8. That case, as we take it, is not in point, for the reason that in that case the affidavit stated that A. J. Wells, a member of the board, was an enemy of the relator, and that he had publicly announced his intention "to find relator guilty and that he proposed to vote to remove him from office, no matter what the evidence might be, and that his mind was made up and his determination fixed." No such statement is made in the affidavit in this case. But, in addition to this, the court in its opinion cites *People v. Board of Trustees*, 39 New York Supp. 607, and quotes as follows:

Cases are to be found where judicial officers, or officials acting in a judicial capacity, have been permitted to act, notwithstanding the disqualification of interest; but I think, without exception, they have all been cases where, unless such officer was permitted to act, there would have been a failure of justice, for the reason that there was no other person who could act. They have been confined to cases where the judicial tribunal or body to act consisted of but a single person, and there was no other tribunal or officer before whom the proceedings could be taken, and the officer was permitted to act from necessity.

You will notice the court say, "but I think, without exception, they have all been cases where, unless such officer was permitted to act, there would have been a failure of justice." This is exactly the situation here; that is, if the senators are not permitted to act, then there will be a failure of justice in this instance, for the respondent has already challenged so many senators that there is not two-thirds left to try the case, and it is well known in an impeachment trial that there must be a judgment by at least two-thirds of the members elected. We therefore most earnestly contend that the challenge to the senators should be overruled, and that all of the senators should sit in the trial of this cause.

At 11:45 a. m. the court of impeachment took a recess until 1:15 p. m.

## AFTERNOON SESSION.

The Senate resolved itself into a court of impeachment at 1:15 p. m.

BY MR. ISRAEL: *Your Honor and You the Members of this Honorable Court*—In closing this argument, which at least one member of the board of managers fails to distinguish as entitled to immunity from the methods and language of political debate and stump-speech-making, I am going to rest content with a reiteration of all that I said in my opening discussion of this challenge.

The single great daily paper of this state that alone has evidenced a desire to present to the reading public who cannot follow these proceedings first hand, with all that occurs in this trial, and which has not suppressed from the beginning of the investigation that lead up to these articles of impeachment everything that would make to the defense of my client, has seen fit to print in its columns the text of my opening argument. It is before you. You can read it, should you have any doubtful recollection as to what I then said.

Before reviewing briefly that which has been said by these prosecutors in answer to the merits of my opening argument, I want, in justification to myself—in justification to my client—to devote but a moment to answer and analyze some of the remarks made by one of these managers in his discussion of my motion for disqualification of certain of you as triers of these charges. This manager—he of the land of water-melons and rattlesnakes, of big red apples and malaria, of luscious peaches and dirty ditch water, of extremes in good and evil—he is, to quote him, simply astounded at my unseemly and indecent tirade. Wherein in my argument do you find a single indecent word, remark or thought? There it is, in print in the paper before you. Wherein have I given utterance to a single unseemly thought in all that argument? Please pick it out for me. Is it indecent and unseemly to object to a man sitting to try me and adjudge my guilt or innocence of a crime charged against me when I know and the record proves that he has already determined and voiced his opinion that I am guilty? What lexicon of definition obtains in the classic Yakima valley that so defines the words “indecent” and “unseemly”?

Whom does he refer to when he says to you: “Parties who have no connection whatever with this case have been dragged in here and subjected to not only unwarranted criticism but the grossest insults?” Are they the senators who were members of the investigating committee? Is it the acting governor of this state? Are they the senators now challenged who caucused with that governor at the time they judged John Schively, found him guilty and pledged themselves to support a Palmer bill to abolish his office? Is it the attorney general? Is it the *P.-I.* and the Tacoma *Ledger*? (those cleanest of clean birds). Each and all of

these "had connection" with the matters that made possible this challenge, according to the record and according to the undisputed affidavit of John Schively, as contained in his answer to these articles in making this challenge. Whom else than these did I refer to or "drag in" in my opening argument? No one. If these are "disconnected and uninterested persons," and it is an "unwarranted criticism and gross insult" to refer to them in this challenge, then God help John Schively; I can't.

Hear him: "Mr. President, we are not here to wave the bloody shirt." Again, that strange and infallible use of words the common definition whereof renders the use he makes of them unintelligible. Who has waved the "bloody shirt?" Who has been guilty of secession or attempted to secede? Who has been charging such act against anyone connected or not connected with this prosecution? This exclamation in that manager's flow of words is beyond my intelligence, but I can understand him when he charges me with the "adoption of a practice often employed in the petit criminal courts of the land, and with which I am evidently familiar." I understand the studied insult of that statement and I realize the incentive of it. It must be hard to awaken to a consciousness of the fact that a position you occupy purely through your own scheming and wire-pulling and not because of recognized merit or ability on your part calls upon you for the exercise of talents and learning you do not possess; that the pace set is too hot for you to follow; that sooner or later you must be relegated in favor of some one sufficiently equipped to fight the battle that must be fought. Yes, such realization of mediocrity must be hard to contemplate, and we would most naturally expect from such a one the abandoning of the dignities of argument to the hurling of words, vituperations and insults at one whose arguments he was not legally or mentally equipped to answer. I am done with that manager and his alleged argument when I say to him, I am not a politician. I have been for thirty years attempting to practice my chosen profession and have not been without cliental, honor and profit therefrom. I have never made that honorable profession subservient to anything else—to any other vocation. I never was trained in or studied the intricate phases of political chicanery, treachery and manipulation necessary to be mastered by a person whose ambition in life is to so conduct himself that he may from year to year and forever fatten and gain sustenance at the public crib through the occupancy of some political office or job made possible to him and his pretenses through the easy-going good nature of the great mass of citizen-voters. I deny that I am familiar with the practice of petit criminal courts; but I affirm that if the practice and procedure in such courts is on a par with my procedure thus far in this case, then such practice and procedure is too dignified and too high to be grasped or comprehended by this manager.

Mr. Manager Sparks and his remaining co-counsel have taken a wide range in their discussion of this challenge. I don't propose to attempt a review of the precedence or cases they have cited or quoted from in

their argument. Some of the cases have no application to the situation under discussion. Some of them do not go far enough to meet the facts here—are distinguishable from the facts at bar; others of them make to the establishment of my contention. I am willing to meet them all and measure them all with the decisions of your own supreme court and to stand or fall under the reasoning of that court. It is useless to involve this discussion by the argument of side issues. It doesn't make any difference so far as this challenge is concerned what sort of a court this is—civil, criminal or political. It doesn't make any difference whether we are to try a criminal or a political offense. The rule is the same. The law is the same. The reason for the rule, the reason for the law, is the same—the accomplishment of justice. The doing of justice between man and man—a desire that it be accomplished—was and is the source and birth of all human law, all rules of the law. The contention made by the challenge is axiomatic. It needs no law or rule beyond the conscience of any honest man to establish its truth or to work a realization of its truth.

Man's sense of the God-giving idea of justice tells him that no man should sit in judgment of his fellow man save with an unbiased mind toward him. When the mind of he who is called to judge bears enmity towards the accused—has previously determined the guilt of the accused, has previously judged him—such mind cannot again judge so that its judgment may be by reason of its pronouncement alone accepted by all men as a true and just judgment as necessarily the same judgment that would have flown from an unbiased mind. Hence the rule that is announced to be the law in the Barnard case.

I have not appealed to you to disqualify these senators and to then vote their own disqualification simply by reason of the law which I feel you are bound to follow in the interest of right and justice, but I have appealed to your consciences—to your innate sense of justice. You may refuse to be bound by the law. You may salve your conscience by adopting the sophistry of the managers and their counsel, urged upon you as a justification for your violating the law—that necessity knows no law—forgetting that that necessity is the political assassination of John Schively because deemed a necessity by certain newspaper owners as self-appointed republican party leaders, whose edict is reflected and sought to be carried into effect by a toadying executive to whom you in turn bow the subservient knee. You may vote to retain these challenged senators as triers of this case notwithstanding their admitted bias, prejudice, enmity and pre-judgment against and of John Schively, and they may vote with you to the end of their own retainment. You may turn these proceedings from orderly and judicial inquiry and trial of an accused man into a political farce. You may smother the still small voice within you that is even now crying out the truth—the right of my challenge. Still will I abide with you to the bitter end, ever crying out for the law and for justice. I am done. Let your vote now record your will. There is no appeal from your decision. In this court your conscience is your sole reviewing tribunal.



BY THE PRESIDENT: The secretary will read rule 18.

[Rule 18 read by secretary.]

BY THE PRESIDENT: I desire to say that under this rule I believe that it is a question not for the president of the Senate or the presiding officers in the court of impeachment to decide, but a matter that should go directly to the Senate for their decision, and if it becomes necessary for me to interpret the rules I would interpret at this time that motions might be offered, but no debate had. The provision of rule 18 reads that the doors may be closed. My interpretation of that is that it would confine us to the Senate in much the same way as a jury would discuss and talk things over among themselves.

BY SENATOR PRESBY: I move to close the doors for deliberation, and that we go into executive session to determine this matter.

BY THE PRESIDENT: The chair would interpret the motion of the senator (Presby) to clear the galleries, the defendant and the defendant's counsel, and of all but the officers of the Senate, such as the sergeant-at-arms, secretary, and stenographer.

BY SENATOR ALLEN: I offer as a substitute to that motion that a roll call be had on the question of sustaining the demurrer of the respondent.

The substitute motion of Senator Allen carried.

BY THE PRESIDENT: Shall Senator Paulhamus sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objection contained in section 1 of defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Piper, Polson, Presby, Roberts, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—31.

Voting nay: Senators Booth, Eastham, Potts, Smith, Williams, Mr. President—6.

Absent or not voting: Senators Graves, Hutchinson, Nichols, Paulhamus, Whitney—5.

BY THE PRESIDENT: The objections and exceptions in section 1 of defendant's answer as to Senator Paulhamus are overruled.

BY THE PRESIDENT: Shall Senator Allen sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objection contained in section 2 of defendant's answer?

Voting aye: Senators Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Knickerbocker, McGregor, Metcalf, Myers, Paulhamus, Piper, Polson, Presby, Roberts, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—27.

Voting nay: Senators Booth, Eastham, Huxtable, Kline, McGowan, Minkler, Potts, Smith, Williams, Mr. President—10.

Absent or not voting: Senators Allen, Graves, Hutchinson, Nichols, Whitney—5.

BY THE PRESIDENT: The objections and exceptions contained in section 2 of defendant's answer as to Senator Allen are overruled.

BY THE PRESIDENT: Shall Senator Fishback sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objection contained in section 3 of defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Huxtable, Knickerbocker, McGregor, Metcalf, Myers, Paulhamus, Piper, Polson, Presby, Roberts, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—29.

Voting nay: Senators Eastham, Kline, McGowan, Minkler, Potts, Smith, Williams, Mr. President—8.

Absent or not voting: Senators Fishback, Graves, Hutchinson, Nichols, Whitney—5.

BY THE PRESIDENT: The objections and exceptions contained in section 3 of defendant's answer as to Senator Fishback are overruled.

BY THE PRESIDENT: Shall Senator Anderson sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objection contained in section 4 of defendant's answer?

Voting aye: Senators Allen, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Williams, Mr. President—37.

Absent or not voting: Senators Anderson, Graves, Hutchinson, Nichols, Whitney—5.

BY THE PRESIDENT: The objections and exceptions contained in section 4 of defendant's answer as to Senator Anderson are overruled.

BY THE PRESIDENT: Shall Senator Arrasmith sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objection made in section 4 of defendant's answer?

Voting aye: Senators Allen, Anderson, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Williams, Mr. President—37.

Absent or not voting: Senators Arrasmith, Graves, Hutchinson, Nichols, Whitney—5.

BY THE PRESIDENT: The objections and exceptions contained in section 4 of defendant's answer as to Senator Arrasmith are overruled.

BY THE PRESIDENT: Shall Senator Blair sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections contained in section 4 of defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Booth,

Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Williams, Mr. President—37.

Absent or not voting: Senators Blair, Graves, Hutchinson, Nichols, Whitney—5.

BY THE PRESIDENT: The objections and exceptions contained in section 4 of defendant's answer as to Senator Blair are overruled.

BY THE PRESIDENT: Shall Senator Brown sit as a member of this court of impeachment to try John H. Schively, notwithstanding the objections contained in defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rydstrom, Smith, Stewart, Williams, Mr. President—33.

Voting nay: Senator Booth—1.

Absent or not voting: Senators Brown, Graves, Hutchinson, Nichols, Rosenhaupt, Smithson, Stevenson, Whitney—8.

BY THE PRESIDENT: The objections and exceptions contained in section 4 of defendant's answer as to Senator Brown are overruled.

BY THE PRESIDENT: Shall Senator Bryan sit as a member of this court of impeachment to try John H. Schively, notwithstanding the objections made in section 4 of the defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rydstrom, Smith, Stewart, Williams, Mr. President—33.

Voting nay: Senator Booth—1.

Absent or not voting: Senators Bryan, Graves, Hutchinson, Nichols, Rosenhaupt, Smithson, Stevenson, Whitney—8.

BY THE PRESIDENT: The defendant's challenge as to Senator Bryan is overruled.

BY THE PRESIDENT: Shall Senator Cox sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections made in section 4 of the defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Davis, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rydstrom, Smith, Stevenson, Stewart, Williams, Mr. President—35.

Absent or not voting: Senators Cox, Graves, Hutchinson, Nichols, Rosenhaupt, Smithson, Whitney—7.

BY THE PRESIDENT: The defendant's challenge as to Senator Cox is overruled.

BY THE PRESIDENT: Shall Senator Davis sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections contained in section 4 of the defendant's answer?

Voting aye: Senator Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rydstrom, Smith, Stevenson, Stewart, Williams, Mr. President—35.

Absent or not voting: Senators Davis, Graves, Hutchinson, Nichols, Rosenhaupt, Smithson, Whitney—7.

BY THE PRESIDENT: The defendant's challenge as to Senator Davis is overruled.

BY THE PRESIDENT: Shall Senator Falconer sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections made in section 4 of the defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rosenhaupt, Smith, Stevenson, Stewart, Williams—33.

Voting nay: Senators Booth, Mr. President—2.

Absent or not voting: Senators Falconer, Graves, Hutchinson, Nichols, Rydstrom, Smithson, Whitney—7.

BY THE PRESIDENT: The defendant's challenge as to Senator Falconer is overruled.

BY THE PRESIDENT: Shall Senator McGregor sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections made in section 4 of the defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGowan, Metcalf, Myers, Minkler, Paulhamus, Polson, Potts, Presby, Roberts, Rosenhaupt, Smith, Smithson, Stevenson, Williams, Mr. President—32.

Absent or not voting: Senators Bryan, Eastham, Graves, Hutchinson, McGregor, Nichols, Piper, Rydstrom, Stewart, Whitney—10.

BY THE PRESIDENT: The defendant's challenge as to Senator McGregor is overruled.

BY THE PRESIDENT: Shall Senator Fatland sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections made in section 4 of the defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rosenhaupt, Smith, Smithson, Stevenson, Mr. President—33.

Voting nay: Senators Booth, Williams—2.

Absent or not voting: Senators Fatland, Graves, Hutchinson, Nichols, Rydstrom, Stewart, Whitney—7.

BY THE PRESIDENT: The defendant's challenge as to Senator Fatland is overruled.

BY THE PRESIDENT: Shall Senator Myers sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections made in section 4 of the defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rosenhaupt, Smith, Smithson, Stevenson, Williams, Mr. President—34.

Absent or not voting: Senators Graves, Hutchinson, Myers, Minkler, Nichols, Rydstrom, Stewart, Whitney—8.

BY THE PRESIDENT: The defendant's challenge as to Senator Myers is overruled.

BY THE PRESIDENT: Shall Senator Polson sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections contained in section 4 of the defendant's answer?

Voting aye: Senator Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Paulhamus, Piper, Potts, Presby, Roberts, Smith, Smithson, Stevenson, Stewart, Mr. President—32.

Voting nay: Senators Booth, Williams—2.

Absent or not voting: Senators Graves, Hutchinson, Minkler, Nichols, Polson, Rosenhaupt, Rydstrom, Whitney—8.

BY THE PRESIDENT: The defendant's challenge as to Senator Polson is overruled.

BY THE PRESIDENT: Shall Senator Stevenson sit as a member of this court of impeachment in the trial of John H. Schively, notwithstanding the objections contained in section 4 of defendants answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Piper, Polson, Potts, Presby, Roberts, Smith, Smithson, Stewart, Williams, Mr. President—35.

Absent or not voting: Senators Graves, Nichols, Paulhamus, Rosenhaupt, Rydstrom, Stevenson, Whitney—7.

BY THE PRESIDENT: The defendant's challenge as to Senator Stevenson is overruled.

BY THE PRESIDENT: Shall Senator Paulhamus sit as a member of this court of impeachment, notwithstanding the objections contained in section 4 of the defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Piper, Polson, Presby, Roberts, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—30.

Voting nay: Senators Booth, Eastham, Hutchinson, Huxtable, Potts, Smith, Williams, Mr. President—8.

Absent or not voting: Senators Graves, Nichols, Paulhamus, Whitney—4.

BY THE PRESIDENT: The challenge as to Senator Paulhamus, contained in section 4 of defendant's answer, is overruled.

BY THE PRESIDENT: Shall Senator Allen sit as a member of this court of impeachment, notwithstanding the objections contained in section 4 of defendant's answer?

Voting aye: Senators Anderson, Arrasmith, Bassett, Blair, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Knickerbocker, McGregor, Metcalf, Myers, Paulhamus, Piper, Polson, Presby, Roberts, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—27.

Voting nay: Senators Booth, Eastham, Hutchinson, Huxtable, Kline, McGowan, Minkler, Potts, Smith, Williams, Mr. President—11.

Absent or not voting: Senators Allen, Graves, Nichols, Whitney—4.

BY THE PRESIDENT: The objections contained in section 4 of defendant's answer as to Senator Allen are overruled.

BY THE PRESIDENT: Shall Senator Fishback sit as a member of this court of impeachment, notwithstanding the objections made in section 4 of the defendant's answer?

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Hutchinson, Huxtable, Knickerbocker, McGregor, Metcalf, Myers, Paulhamus, Piper, Polson, Presby, Roberts, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—30.

Voting nay: Senators Eastham, Kline, McGowan, Minkler, Potts, Smith, Williams, Mr. President—8.

Absent or not voting: Senators Fishback, Graves, Nichols, Whitney—4.

BY THE PRESIDENT: The objections to Senator Fishback contained in section 4 of the defendant's answer are overruled.

The president called Senator Presby to the chair.

BY MR. ISRAEL: I desire at this time, that the record may show, since a roll call and vote of this court, in all instances by a majority of two-thirds or more, has held that these challenged senators are eligible to sit in this court, notwithstanding the averments made against them by the respondent, which averments, being under oath, are not denied or questioned as to their truth, and must in consequence be accepted as true. In fact, I desire to object and except to the jurisdiction of this court in proceeding with this trial with these members of the court sitting as a part of the court, my objection and exception being, and the objection that I desire to have ruled upon at this time and the ruling made a matter of record, is formally thus made: I object to the jurisdiction of this court to sit for any purpose in the trial of these articles of impeachment, so long as it is constituted with these challenged mem-

bers, or any of them, sitting as members and portions of said court, for the reason that with such persons, or any of them, as members, the court is wholly without jurisdiction, and any act that it may perform in the premises is absolutely void, and I would like a ruling of the chair upon the objection to the jurisdiction.

BY THE PRESIDING OFFICER: The objection will be overruled and denied—the objection to the jurisdiction—and the record will show it.

BY MR. ISRAEL: *Your Honor and Members of this Honorable Court—*In the respondent's answer, made necessary to be therein set out by reason of your rules of procedure to govern this trial requiring that all pleas and motions shall be therein contained, we have moved to strike from these articles of impeachment article 25. This article 25 is the charge that the respondent is guilty of perjury, committed while he was a witness undergoing examination before a grand jury in the City of Spokane in March of this year.

Turning to the article itself, you who are lawyers will readily see that it is naught but the reproduction of a carefully drawn indictment for perjury, such as is prepared for use in trials of persons to be so charged in a criminal law court. It has undoubtedly been accomplished in its phraseology by bodily transplanting the indictment now on file in the superior court for Spokane county into this article, the indictment now pending in said superior court against this respondent being shown to you in his answer by his affidavit in connection with this motion.

In our present motion to strike this article—at page 13 of our answer that is before you—we claim as a reason and basis of the motion that, *first*, all of the matters and things therein alleged are matters and things for and independent of the office of insurance commissioner of the State of Washington and relative to and are allegations of matters in the private life of the respondent; *second*, because all the matters and things therein set forth are the reallegation of matters and things charged against this respondent by a grand jury in the superior court of the State of Washington for Spokane county by indictment, which indictment is now pending and for trial in said court; *third*, because by reason of said facts the said superior court of the State of Washington for Spokane county ought not of right to be disturbed in its jurisdiction or trial of the matters and things in said indictment alleged, and in said paragraph set forth, and that said matters are for the purpose of this trial redundant and immaterial. It has already been argued to you by your board of managers that you are a political court; as such you are not a fit or competent court to try any man for perjury—to adjudicate his guilt or innocence to such an accusation. The criminal courts, with all the safeguards thrown about them by the law for the protection of the innocent, are the only places where such a charge should be tried or determined—the only courts that have jurisdiction of such offenses.

Your managers and their counsel have already argued to you on the former motion—the challenge as to qualification of certain of your

members to sit in this trial—that you are not a civil or criminal court, to be guided or bound by the rules of the law as to such courts, but that you are a legislative tribunal sitting to try political offenses. Perjury is not a political offense. It is one of the gravest and least excusable crimes of all the felonies, and is punishable next to homicide. Then why should you try it in this political court—if that is the class of tribunal that this is—and I must take it that you so consider it, judging you from your vote on my challenge to certain of your members?

Perjury does not consist simply in bearing false witness—in testifying untruthfully—such is not enough to constitute perjury. It is only committed by a wilfully, knowingly and corruptly swearing to a lie by affirming such falsehood, while on oath, to be the truth. That is perjury.

Laying aside the legal objections to your trying this charge in this proceeding—for the moment not considering them—fairness to this respondent demands that you refuse to try the charge in this article. You confront the respondent with it hundreds of miles from the place of its alleged happening. You hamper him, by demanding his presence here, in his opportunity to gather his witnesses there for the purpose of meeting it and defending against it; and then you propose to try him here upon such charge.

For all of these reasons, gentlemen, we urge that you strike this record and refuse to consider any evidence under it.

By MR. MANAGER EDGE: *Mr. President and Gentlemen of the Senate*—The purpose of this trial is to determine whether or not the respondent has, by his actions, forfeited his right to hold the office of state insurance commissioner, and this body, following those rules which should govern in any deliberative body, should admit for the purpose of enlightenment any and all facts tending to prove or disprove the accusation of unfitness.

While the law may be unsettled upon some phases of this case, yet it must be conceded by all those who have investigated that this court may take cognizance in reaching this judgment of all acts committed by the respondent, whether in the discharge of his official duties or in his capacity as a citizen of the state. This is so clear that it would seem to me a waste of time to further argue it. The constitution of Washington is very plain upon that subject. I refer you to section 2, article 5 of the constitution of the state, which reads as follows:

The governor and other state and judicial officers, except judges and justices of courts not of record, shall be liable to impeachment for high crimes or misdemeanors, or malfeasance in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit in the state. The party, whether convicted or acquitted, shall, nevertheless, be liable to prosecution, trial, judgment, and punishment according to law.

You will notice the constitution says “shall be liable to impeachment for high crimes or misdemeanors, or malfeasance in office.” You will notice the comma in the constitution after the word “misdemeanors” and before the phrase “or malfeasance in office,” clearly conveying the



intention of the framers of the constitution that an encumbent of any public office was liable to impeachment for high crimes or misdemeanors separate and distinct from misconduct in his office, as covered by the phrase, "or malfeasance in office."

The article of impeachment which respondent seeks to have stricken charges him with having, on the 20th day of April, 1909, in the county of Spokane, committed the crime of perjury, and we contend that the proof of that article should be considered by this Senate in determining the fitness of the respondent to continue in office. The fact that an indictment for the same offense is pending against the respondent in Spokane county is no argument in favor of the motion to strike. The constitution clearly contemplates that one may be punished by impeachment for the commission of an offence, yet the criminal courts of the state be not estopped to proceed against him in their jurisdiction. The constitution so states in as many words: "The party, whether convicted or acquitted, shall nevertheless be liable to prosecution, trial, judgment, and punishment, according to law." Under the well settled rules of the law which counsel cannot dispute, the respondent would not in the trial of his case in Spokane county be permitted to interpose as a defense the plea of a conviction or an acquittal before this court, and by a parity to reasoning as well settled as the former proposition he cannot interpose in this court the plea that an indictment is pending against him in Spokane county charging the same offense. In support of this contention, I read to you from the 15th volume of the American and English Encyclopædia of Law, on page 1073, under the title of "Impeachment":

At common law a person may be impeached for a crime, although he has already been indicted for the same crime, and the impeachment trial may proceed, notwithstanding the indictment. On the other hand, it has been held that a judgment on an impeachment is no answer to an indictment in the King's bench. The constitution of the United States and some of the state constitutions expressly provide that a person convicted upon an impeachment shall be liable to indictment, trial and punishment, according to law.

The doctrine thus announced is a resume of all of the authorities extant upon this proposition. The reason for this seemingly double prosecution is very plain. The punishment that might be meted out under a judgment of this court sitting for trial of impeachment cannot but be very inadequate as a punishment, for the offenses heard by it. Under the constitution, the judgment of this court can only extend to removal from office and disqualification to hold any office of honor, trust or profit in the state. By this leniency, if it did not, in addition, expressly provide, it would clearly convey the idea that it intended to leave the commensurate punishment to be dealt out by the criminal courts. This question is touched upon by the supreme court of the State of New York in the case of *Barker vs. The People*, which was an action under a peculiar statute of the State of New York, which provided that as a punishment for dueling the defendant might be adjudged incapable of holding or being elected to any post of profit, trust

or emolument, civil or military, under the State of New York. From such a judgment the defendant appealed to the supreme court, claiming that the punishment prescribed by the statute was in conflict with the constitution. In discussing this question, the court used the following language, which seems very applicable to this case (15 American Decisions, 327):

The constitution has in one case limited punishment. When an officer of the state is convicted upon impeachment, the judgment cannot extend farther than removal from office and disqualification to hold office. This provision stands here a restriction, not an authority. As the punishment is not to extend farther than removal and disqualification, the sense of the terms, and the known course of proceedings in the country from which we derive the history and practice of impeachments, both show that this provision is a mere limitation of a greater power, a power to inflict other punishments, as well as removal and disqualification. Impeachments of public officers, a peculiar species of accusation, made and tried in a peculiar manner, are to extend no farther in their effect than to discharge an officer from his trust, and to render him incapable of holding office; *but if the cause for which the officer is thus punished is a public offense, he may be also indicted, tried and punished, according to law*, the constitution leaving the definition of the offenses, and its particular punishment, in this case, as in all others, to the general power of the legislature. This part of the constitution, concerning judgment on impeachments, is therefore a limitation of the power of the court for the trial of impeachments, and not a restriction upon the general power of the legislature over crimes.

If the framers of the constitution did not intend that misconduct in private life might be considered in reaching a judgment in an impeachment case, then it is manifest that the words "high crimes or misdemeanors," as used in the constitution, are a mere surplusage, for all misconduct in the discharge of his official duties would be covered by the phrase "malfeasance in office." The rules governing impeachments in England permitted impeachment of any citizen of the commonwealth for any crime committed by him, whether in or out of office. The rule thus announced by the British parliament has been followed in the United States, excepting that prosecution here is limited to office-holders; but the basis of the prosecution remains the same. There have been nine impeachment cases tried before the Senate of the United States; seven of them have been unsuccessful, and resulted in the failure of the constitutional majority to vote for conviction. One of the two that was successful was the case of Judge Humphreys, federal judge in one of the districts of Tennessee, who was tried before the United States Senate in 1862. The complaint against him alleged that upon one occasion during a speech made by him in Tennessee as a citizen of the Union—not in any manner in the discharge of his duties as a federal judge—he had advocated the cause of secession, which the Senate believed, although not in the discharge of his duties as a judge, to be of such a serious criminal nature as to warrant his impeachment and removal from office, and he was forthwith removed.

The article objected to here charges respondent with the crime of perjury. This is an offense of as great moral perfidy as any known to law. When we consider that the person charged is one occupying a prominent position in public life, the heinousness of the offense becomes all the more apparent. The appeal of ignorance or mistake or lapse of memory comes not plausibly from such as he. If a sovereign official of this state be permitted to take an oath to tell the truth and then wilfully and knowingly states what is not true, and such matters be stricken from articles of impeachment, then I maintain that the law of impeachment is a failure, and should have no place in our jurisprudence. If we are unable to substantiate the allegations of this article by satisfactory proof, that is another matter; but it is assumed, for the purpose of this argument, that the same can be proven, and it is objected to simply on the grounds of fair play to the respondent and the impeding of the administration of justice in the courts of Spokane. Counsel well knows such arguments cannot stand in law and must be simply offered for the purpose of affording an excuse for the striking of this article.

His complaint that he has been at a disadvantage by being confronted by this charge, the proof of which is in another part of the state, is not well taken. The process of this court has been open to him from the date it was open to us, and any and all witnesses he may desire have been and will be brought here at the expense of the state.

For these reasons, we believe this article should not be stricken, but that the same remain and be considered with the other articles of impeachment.

BY MR. LEE: *Mr. President and Gentlemen of the Senate*—May it please your honor and gentlemen of the Senate, in addressing myself to respondent's motion to strike article 25 of the articles of impeachment I shall be brief.

Counsel for respondent, in his argument in support of this motion, manifested an indifference and brevity which were very appropriate, because, as is perfectly apparent, there is, and can be, no merit in the motion to strike. In the first place I desire to direct your attention to article 25 of the state constitution. The latter part of section 2 reads as follows:

The party whether convicted or acquitted shall, nevertheless, be liable to prosecution, trial, judgment and punishment according to law.

The meaning of this provision is so apparent as not to require extended discussion. In fact it would seem idle to discuss it at all. As we have already shown you, there is a vast difference between an impeachable offense and an indictable offense. Impeachable offenses cover those which involve moral turpitude, corruption, malfeasance or misfeasance in office and many other acts. It has been established from an early date that an impeachable offense need not be an indictable offense. If, however, an impeachable offense constitutes a

violation of the criminal law, then the party may be both impeached and prosecuted for the same offense.

The makers of the constitution undoubtedly had in mind when framing this provision to which I have made reference the difference between impeachable and indictable offenses. It was apparent to them, no doubt, that the judgment to be pronounced in an impeachment case was political in its nature and scope and deprived a man not of his person nor of his property, but merely of his office. In other words, an impeachment proceeding is before a political tribunal, which can only pronounce a political judgment. On the other hand, a criminal proceeding, if successful, tends to deprive a man of his liberty, and perhaps of his life. The essential difference between the two proceedings makes the constitutional provision above referred to very clear and very plain. If the judgment in an impeachment case were in any sense penal in its nature or in its effects, then this constitutional provision would not have been inserted in the organic law, because in that event an impeachment trial and a criminal trial for the same offense would result in placing a man in jeopardy twice. We, therefore, submit to you, in view of this fundamental distinction between an impeachment trial and a criminal trial, that this constitutional provision means just what it says, was enacted for a purpose, and that purpose is a good one. To illustrate, if a superior officer of the State of Washington were impeached for perjury, bribery or some other high crime or misdemeanor, and conviction followed and also ouster from office, can counsel for the respondent or anyone else suggest any good reason why subsequent criminal prosecution for the same offense should not be had? If that superior officer has prostituted his office and has violated the criminal laws of the state, he should not only be ousted from that office, but he should also be prosecuted and convicted for a violation of the criminal law just as any other criminal is and should be.

It occurs to me that it is unnecessary consumption of your time to argue this proposition further, and I believe that you will determine that, inasmuch as article 25 of the articles of impeachment charges a high crime and misdemeanor under the constitution, and is therefore an impeachable offense, this respondent should be tried upon and under that article.

If respondent's contention is sound and this article should be stricken, then let me ask what would be the status of the matter if the prosecuting attorney of Spokane county should dismiss the perjury charge? That is not an impossible occurrence. In that event, what protection would the people have?

Furthermore, the board of managers in this case contend in answer to counsel's argument, that this motion should be granted and this article 25 stricken, that this Senate sitting as a court of impeachment has no right or authority to strike any of these articles of impeachment. A co-ordinate branch of this legislature preferred these articles of impeachment by a unanimous vote. This Senate might determine that a demurrer could be sustained to article 25 if it did not charge

an impeachable offense, but where is the authority found for this court of impeachment to strike any or all of the articles of impeachment now before you if they state impeachable offenses? And bear in mind, gentlemen of the Senate, that there is no contention made by respondent's counsel that article 25 does not state an impeachable offense. In fact his failure to demur this article is conclusive proof of his admission that the article does state an impeachable offense. If it does, we contend that there is no authority or right in this body to strike that article of impeachment, and the only course for respondent to pursue is to proceed to trial upon that article. If respondent's contention is true and this article should be stricken, then this Senate might with equal propriety proceed to strike each and every article of the articles of impeachment, and then we ask you what would there be to try? Would not such conduct on the part of this Senate absolutely nullify and render nugatory section 1 of article 25 of the constitution, which gives to the House of Representatives the sole power of impeachment? We assert that the House of Representatives has exercised that power and has in article 25 charged an impeachable offense; and that therefore respondent's motion should be denied because it is devoid of all merit.

BY MR. ISRAEL: *Your Honor and You Honorable Members of this Court of Impeachment*—Again I am met with hairsplitting distinctions and words by this prosecution in answer to my argument that you strike from this record. I have never said, never even intimated, that an acquittal or conviction here of this charge of perjury by this court could be plead in bar to the further prosecution of that charge in the Spokane court. It was unnecessary for the gentlemen to argue that proposition—to build up a man of straw and knock him down again. That admitted fact is the proof of the viciousness of this charge as a part of these articles. Look at the possibilities—the probabilities of ultimate results of this article are to remain and are to be here tried. Suppose in the end John Schively is acquitted of all of these charges in these articles aside from the perjury charge by your final vote herein. Suppose that they all fail and fall under the force of the demurrer we have directed against them when that demurrer is reached. And suppose that thereafter you find John Schively guilty under this perjury charge and remove him from office—cast him out for the abhorrence of all honest men. And then suppose John Schively tried in the Spokane superior court—his trial there freed from all the heat and passion and feeling that is ever attendant here. Suppose under the law and by the rules of the law John Schively is there acquitted. What have you then done? What havoc have you then wrought? How will you then undo the mischief of it all? How restore to him that which such a verdict in that court would declare he had always been entitled to? No! No! It would then be too late. No power could remedy the evil wrought by over-zealous prosecutors and the hatred of hidden enemies.

The assistant attorney general says to you: "What would the status of the matter be if the prosecuting attorney of Spokane county

should dismiss this perjury charge? That is not an impossible occurrence." And he gives this to you as a reason why you should not strike this perjury charge from these arguments.

My God! gentlemen, my answer to that is, If it is given the range of possibility to believe or to conjecture that that officer permitted that indictment by his grand jury without such investigation has satisfied him as to the probable truth of the charge therein to such extent that he will not change that opinion until by trial that grand jury has been proved in error, then I say that officer has trampled under foot the barriers of the law that safeguard the liberties of our citizens, and we should not contaminate ourselves with the unholy thing, but send it back to him to dismiss and destroy.

Why was this indictment incorporated in these articles? Who suggested it? Who accomplished it? There was no reference to it in the investigating committee's report out of which these articles grew. There was no reference to it in your governor's report to the legislature after calling you in extraordinary session to consider that report. Why is it here save to bolster up these articles at the eleventh hour because of the recognized innate weakness of them with it absent? If Schively is acquitted here without it and subsequently convicted of its charge in Spokane, the result in working his removal from office will be the same as if you had found him guilty on these other charges here. Have you no faith in the ability of the Spokane court to reach a right judgment in the matter? Where is the necessity of your entertaining this charge? I said to you in closing my last address to you on the other motion that though the result of the vote on that motion was against my contentions, I would yet abide with you to the end, crying always at your heels for the law, for justice and for the right. So am I calling and crying out, and you know in your heart of hearts that justice to John Schively—justice and fairness—only and alone demands of you that you divorce this trial from the record and allow the proper court—the Spokane court—to try and determine guilt or innocence under it. Thus only will right be accomplished in the end, no matter what the end may be.

BY THE PRESIDING OFFICER: I will rule upon this motion, and if one-fifth of the senators desire to appeal they will please arise. I hold that this Senate sitting as a court of impeachment has jurisdiction of the matter contained in article 25, at which this motion is aimed; that there is no conflict of jurisdiction between this Senate sitting as a court of impeachment and the superior court before which the proceedings of the criminal cases referred to are now pending. It seems perfectly clear to my mind from the constitutional provision that has been cited. The judgment of this Senate sitting as a court of impeachment could not be pleaded in abatement or a bar in the cases pending in the superior court, nor could a judgment of this court be pleaded there. The purposes of the two actions are not in any sense similar, and therefore I shall deny the motion to strike.

By MR. ISRAEL: Your honor, for the purpose of discussing these demurrers, I have attempted in a hasty way to group these articles—with possible minor amendments—in the following groups, and I would request of the honorable members of this court—I don't conceive how it is possible to follow these arguments and to intelligently vote on these articles if they are to be voted upon in groups without you take a memoranda of the grouping before the argument is commenced, so that when the argument is completed, and you come to vote upon them you will know which group you are voting on. I want to first discuss article one, then article two, then group together in the discussion all of the following articles which are identical, and have a ruling as to each and all of them. They are three, four, five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen and fifteen. Article sixteen is by itself. Another group is articles seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two. Article twenty-three stands alone, and article twenty-four alone. Number ten should be included in the group of seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two. I am going to address myself to these groups as if they were single articles, presuming that they are identical except as to name and companies and dates. Should I discover in the discussion that I am in error as to this grouping, I will ask to change the grouping.

By agreement of counsel, witnesses in attendance were excused until 1:30 tomorrow.

At 5:00 o'clock p. m. the court of impeachment took a recess until 9:30 tomorrow morning.

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SENATE CHAMBER,  
OLYMPIA, WASH., August 13, 1909.

The Senate resolved itself into a court of impeachment at 9:30 a. m.

Senator Presby was called to the chair by the president.

By THE PRESIDING OFFICER: Mr. Israel, you will proceed with your argument.

By MR. ISRAEL: If your honor please, before proceeding, it might be as well that there be no difference of opinion as to the manner in which these demurrers are to be handled by this honorable court. I was under the impression, until there was some suggestion to the contrary before we convened this morning, that the Senate would pass upon these various groups as each was presented—that is, that upon the presentation of group number one, full presentation by myself and by the honorable gentlemen on the other side, the Senate would then determine the question of sustaining or overruling the demurrers in that group urged, and then pass on the second group. It has been

suggested this morning that I am to discuss all of these groups in this opening, and I would like the sense of your honor regarding that matter and of the members of the court.

BY THE PRESIDING OFFICER: It occurs to me that the discussion of and the passing upon one of these would eliminate a great many elements of law involved in the other, and that it would thereby be the most speedy way, but the only question would be the question of expediency, of hurrying the discussion of this matter.

BY MR. ISRAEL: In grouping these, I attempted to group them so that each group contained a different element of demurrer than the others. It is true the ruling on the first group would eliminate a great many of the factors urged in the second group, but in the second group would remain factors that were not urged as to the first group; and if they were all argued at this time, it seems to me it would be somewhat confusing.

BY THE PRESIDING OFFICER: It occurs to me that insofar as the principle of law is applicable to all of them, that principle could be disposed of upon the determination of the first demurrer; eliminate it entirely from the discussion of the other groups, and that would be the most expeditious way of disposing of these questions; and I think that, unless it is objected to by the Senate, would be the better way to proceed, and then, as stated, there would be no confusion in the minds of the senators respecting the points raised. I think we had better proceed on that basis and eliminate everything that is in common on the determination of the first demurrer—the demurrer to the first charge.

BY MR. ISRAEL: Very well.

We come now to the testing of the legal sufficiency of the articles that have been exhibited by the House of this legislature against John H. Schively to you, and the truth of which you are required to determine.

These articles of impeachment are the complaint that that House makes to you, the Senate, by which it asks you to become a court and allow it—the House by its appointed managers—to prosecute that complaint before you by introduction of its evidence by which it expects to prove the truth of that complaint; and that complaint being received by you, its sufficiency is challenged by the accused. This is the office of a demurrer.

Unfortunately for me in presenting this demurrer, few of your body are lawyers. To the lawyers in this body, the language and purposes of this demurrer are readily understood; but as to you who are not lawyers, my only hope of having it maintained must lie in my ability to so explain its office and purpose and the procedure that you may fully comprehend it.

In any court in the land this demurrer, I undertake to say, would be instantly sustained and it should be sustained here.



This article 1, to which the demurrer is directed, reads as follows:

That at all times since the 13th day of January, 1909, J. H. Schively has been and now is the duly elected, qualified and acting insurance commissioner of the State of Washington; that for eight years last past and until the 13th day of January, 1909, said J. H. Schively was the duly appointed and acting deputy insurance commissioner of the State of Washington.

That the said J. H. Schively, unmindful of the duties of his office, did on the dates hereinafter mentioned conduct himself in a manner highly arbitrary, oppressive and unjust, and was guilty of extortion in violation of the constitution and laws of the State of Washington in the following manner, to-wit:

That F. J. Martin, of Seattle, Washington, on or about April 1st, 1905, represented to J. H. Schively, deputy insurance commissioner, that he desired to enter five insurance companies to the State of Washington; that the said Schively represented to the said Martin that the usual custom of the insurance department was to charge an advance examination fee of \$300.00 each for the admission of companies, but that as the said Martin desired to enter several companies, the advance examination charge would be two hundred dollars (\$200.00) each; that the said Martin, acting upon the said representations, did enter the following companies on the dates herein specified, and did pay to the said J. H. Schively, as deputy insurance commissioner, the entrance fees in advance set opposite each company herein:

Indiana Millers' Fire Insurance Company, of Indianapolis, Indiana, in the month of April, 1905, paid entrance fees through F. J. Martin of \$235.00.

Central Manufacturers' Mutual Insurance Company, of Van Wert, Ohio, in the month of April, 1905, paid entrance fees through F. J. Martin of \$235.00.

The American Guarantee Fund Mutual Fire Insurance Company, of St. Louis, Missouri, in the month of May, 1905, paid entrance fees through F. J. Martin of \$235.00.

Texas National Fire Insurance Company, of Fort Worth, Texas, in the month of April, 1907, paid entrance fees through F. J. Martin of \$235.00.

Lumbermen's Mutual Insurance Company, of Mansfield, Ohio, in the month of August, 1905, paid entrance fees through F. J. Martin of \$235.00.

That in none of the instances herein mentioned did the state receive more than thirty-five (\$35.00) dollars from each of these companies as the statutory entrance fee for the admission of insurance companies to do business in this state.

Wherefore, the said J. H. Schively, as deputy insurance commissioner aforesaid, by demanding of and receiving from the said F. J. Martin the sum of two hundred and thirty-five (\$235.00) dollars as the entrance fee from each of the companies herein mentioned was guilty of a high crime and misdemeanor and malfeasance in office and extortion, unjust, arbitrary and oppressive conduct.

The demurrer that we make to this article I read from page 14 of our answer:

1. Respondent demurs to article 1 of the articles of impeachment herein because—

(a) The facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor, or malfeasance on the part of respondent;

(b) The facts stated in said article are insufficient to constitute

any cause of action in this court against the respondent under the constitution and laws of the State of Washington;

(c) The facts stated in said article are insufficient to tender any issue for trial in this court, or to put the respondent to answer in relation thereto;

(d) This court is without jurisdiction to try or determine the truth or falsity of any fact or issue tendered by said article;

(e) It appears on the face of said article that even if the facts therein stated constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, that then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

Boil the charges in this article down to the fewest words and we have it stating that on or about April 1st, 1905, John H. Schively conducted himself in a highly arbitrary, oppressive and unjust manner towards one F. J. Martin and was guilty of extortion from Martin because at that time Schively collected from Martin an advance examination fee of \$200.00 each for five insurance companies that Martin then introduced into Washington, besides collecting for the state in each instance \$35 statutory entrance fee.

Then the final analysis of the complaint is that he—Schively—was guilty of extortion.

All of the language of this article wholly fails to charge the offense of extortion.

Here is the definition of extortion as you have it defined in your code and laws:

I read from Ballinger's Code, section 7218:

If any officers, whose fees are stated by law, shall corruptly exact or extort any greater fees for any services than by law are stated and allowed, or shall levy, demand, receive, or take under color of his office any bond, bill, or note or other assurance or promise whatever, securing the payment of a greater sum of money for any service than he is by law authorized to demand or receive, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year and be fined any sum not exceeding one thousand dollars.

If this be the definition of extortion, we see at once that none of the elements of the crime, none of the things required to be done to constitute it are charged in this article as having been done by Schively.

Such being the case, it, in the language of the demurrer, fails to state facts sufficient to constitute any cause of action against Schively; and the facts stated therein do not constitute either a high crime, high misdemeanor or malfeasance in office, or any crime, misdemeanor or malfeasance on the part of Schively.

This court is in its nature a criminal court. Its procedure must perforce be analogous to the practice obtaining in a criminal court. It has by its rules provided for a very similar practice.

Its jurisdiction is fixed by the constitution. It is to try certain public officers only, never the individuals. It is to try these public officers only for high crimes, misdemeanors and malfeasance in office, committed while in office. Now, it is my contention that the words mal-

feasance in office have reference solely to acts of omission of duty from which the public suffers, or commission of acts in a manner detrimental to the good of the public as contradistinguished from crime; that by high crimes and misdemeanors are to be understood generally potential acts, and that never can they be constituted by the felonies and misdemeanors of the criminal code without such be specifically charged; and if a crime is specifically charged, then the charge must be met and tested by these definitions.

Measure this article by such rules and we find a bald assertion that respondent committed extortion without the allegation of a single fact that would, if true, constitute extortion.

Again, if you are to try criminal charges in this court, such as extortion, you must of necessity be bound by the laws defining the period of time within which such actions may be prosecuted.

Here is your statute of limitations in criminal cases. It is found in section 6780 of Ballinger's Code:

Prosecutions for the offenses of murder and arson, when death ensues, may be commenced at any period after the commission of the offense; for offenses the punishment of which may be imprisonment in the penitentiary, within three years after their commission; and for all other offenses, one year after their commission.

Here, then, if we could find extortion charged in this article, it would nevertheless be barred by the statute of limitations as to any prosecution for it.

But it seems to me that by brothers of the attorney general's office, who are lawyers, must concede to me that this article, at least, tested by the most ordinary and laxest rules, is wholly insufficient to charge any offense and will confess the demurrer to it.

I do not contend for the degree of particularity in charging the offense that is required in an indictment, but I do claim that some offenses must be charged in plain and ordinary language and that such is not the case with this article.

I maintain that this proceeding is measured by the law of criminal trials; that it is in effect a criminal trial and a criminal court of limited jurisdiction. I maintain that the charge in this article 1 does not come within the constitutional definition of impeachable offenses—that no offense for which impeachment may be had is found in it; that its language fails to charge any crime, and I maintain even if there were such a charge contained therein that the same is shown upon the face of the article to be barred by the statute of limitations.

BY MR. MANAGER MEIGS: *Mr. President and Gentlemen of the Senate*—In his concluding remarks counsel for respondent re-stated the propositions for which he is contending, in these words: "I maintain, *first*, that this is a criminal proceeding and subject to the same rules which obtain in criminal trials; *second*, that the offense charged in this article does not come within the constitutional definition of impeachable offenses, but, even though it does, it is barred by the statute of limitations."

The first question, then, is as to the nature or character of the impeachment proceeding. Our contention is that it is a political or legislative proceeding; that the rules which obtain in criminal cases are inapplicable here; that the articles of impeachment need not pursue the strict form and accuracy of an indictment; that they need contain only so much certainty as to enable the party to put himself upon the proper defense; that, judged by these standards, the article in controversy is sufficient and states a cause of action against the respondent.

Let us consider for a moment, now, the historical feature of the proceeding. Prior to the separation of the American colonies from the mother country the courts of impeachment of England had come to be used for the punishment of political enemies. It was through the institution of impeachment that parliament gained supremacy over the executive department of government. At this time, also, the English people were harassed by reason of the fact that the English constitution provided no means for the removal of an unfit or unworthy ruler. The framers of the United States constitution, from which all the state constitutions draw their inspiration, sought to remedy the latter evil by providing a means of removal of the chief executive and other high officials through impeachment. Desiring to provide against the supremacy of any one department of government over another, they limited the function of impeachment merely to the removal of public officers and their possible disqualification for holding office. That punishment of the individual officeholder is only incidental in this country to the great purpose of preserving the standard of office is shown in the fact that the proceeding of impeachment does not affect the jurisdiction of the courts, which, regardless of the pendency of or judgment rendered in impeachment proceedings, may arrest, try and sentence or acquit the individual for the same act considered on impeachment. Were impeachment a judicial proceeding, primarily, analogous to the ordinary criminal proceeding, the constitutional provision that a man may not twice be put in jeopardy would certainly prohibit such a course.

As a matter of practice, an impeachment trial has much in common with a judicial proceeding in that there are pleadings; evidence, of course, is introduced; argument is heard and judgment rendered. At every step, however, differences and distinctions from the ordinary criminal courts are encountered. The trial of impeachment in America is distinguished from the ordinary trial before a judicial court in the following particulars:

- (1). The proceeding emanates from a legislative body sworn as legislators only;

- (2). The pleadings are not so technical; and several distinct offenses may be combined in one charge or pleading, and this pleading may be amended;

- (3). The trial body is a legislative body, the members of which are elected for their political abilities and beliefs, not subject to

challenges for previous opinions or prejudices, but distinctly named as qualified to sit by the constitution;

(4). Jurisdiction is limited to public officers of the executive and judicial departments of government;

(5). Jurisdiction extends to malfeasance as distinguished from positive violation of law;

(6). No right of trial by jury obtains;

(7). The punishment is limited to removal from office and disqualification to hold office;

(8). No right of appeal obtains;

(9). Executive clemency may not be invoked against its rulings or judgment;

(10). The constitutional provision that crimes shall be tried on information or indictment does not apply;

(11). Arrest and incarceration or bail does not follow the exhibit of articles of impeachment;

(12). There is no statute of limitations against offenses cognizable in impeachment;

(12). The constitutional protection that a criminal shall be tried in the county in which the offense is alleged to have been committed does not apply.

One of the earliest statements relative to the character of impeachment proceedings is that of Senator Bayard's, made during the Blount trial, in 1797, and reported in Wharton's State Trials. This is Senator Bayard's view:

I have but one observation more to make on this point, which is that impeachment is a proceeding purely of a political character. It is not so much designed to punish an offender as to secure the state. It touches neither his person or property, but simply divests him of his political capacity. (Wharton's State Trials, p. 263).

To the same effect is the statement of Hamilton in the Federalist: "The nature of the proceeding," says the Federalist, "*can never be tied down by such strict rules*, either in the delineation of the offense by the prosecutors or in the construction of it by the judges, as in common cases served to limit the discretion of courts in favor of personal security." (Federalist, No. 65).

And this same view was most learnedly discussed by the Hon. Charles Sumner, during the Johnson trial, as follows:

There is another provision of the constitution which testifies still further, and, if possible, more completely. It is the limitation of the judgment in cases of impeachment, making it political and nothing else. It is not in the nature of *punishment*, but in the nature of *protection to the Republic*. It is confined to removal from office and disqualification; but, as if aware that this was no punishment, the constitution further provides that this judgment shall be no impediment to indictment, trial, judgment, and punishment "according to law."

Thus again is the distinction declared between an impeachment and a proceeding "according to law." The first, which is political, belongs to the Senate, which is a political body; the latter, which is judicial, belongs to the courts, which are judicial bodies. The Senate removes from office; the courts punish. I am not alone in drawing this distinc-

tion. It is well known to all who have studied the subject. Early in our history it was put forth by the distinguished Mr. Bayard, of Delaware, the father of senators, in the case of Blount, and it is adopted by no less an authority than our highest commentator, Judge Story, who was as much disposed as anybody to amplify the judicial power. In speaking of this text, he says, that impeachment "is not so much designed to punish the offender as *to secure the state against gross official misdemeanors*": that it touches neither his person nor his property; *but simply divests him of his political capacity.*" (Story, Commentaries, Vol. 1, Sec. 803). All this seems to have been forgotten by certain persons on the present trial, who, assuming that impeachment was a proceeding "according to law," have treated the Senate to the technicalities of the law, to say nothing of the law's delay.

As we discern the true character of impeachment under our constitution, we shall be constrained to confess that it is a political proceeding, before a political body, with political purposes; that it is founded on political offenses, proper for the consideration of a political body and subject to a political judgment only. Even in cases of treason and bribery the judgment is political, and nothing more. If I were to sum up in one word the object of impeachment under our constitution, meaning that which it has especially in view, and to which it is practically limited, I should say *expulsion from office*.

An impeachment is not a technical proceeding, as at *nisi prius* or in a county court, where the rigid rules of the common law prevail. On the contrary, it is a proceeding according to parliamentary law, with rules of its own, unknown to ordinary courts. The formal statement and reduplication of words, which constitute the stock in trade of so many lawyers, are exchanged for a broader manner, more consistent with the transactions of actual life. The precision of history is enough without the technical precision of an indictment. In declaring this rule I but follow a memorable judgment in a case which occupied the attention of England at the beginning of the last century. I refer to the case of the preacher Sacheverell, impeached of high crimes and misdemeanors on account of two sermons, in which he put forth the doctrine of non-resistance, and denounced the revolution of 1688, by which English liberty was saved. After the arguments on both sides, the judges on questions from the lords answered that by the law of England and constant practice "the particular words supposed to be criminal ought to be specified in indictments." And yet in the face of this declaration, by the judges of England, of familiar and indisputable rule of the common law we have the rule of parliamentary law, which was thus set forth:

*"It is resolved by the Lords spiritual and temporal in Parliament assembled, That by the law and usage of Parliament in prosecutions by impeachment of high crimes and misdemeanors by writing or speaking, the particular words supposed to be criminal are not necessary to be expressly specified in such impeachments."* (Howell's State Trials, Vol. 15, p. 467).

The technicalities of the law were made for protection against power, not for the immunity of a usurper or a tyrant. They are respected when set up for the safeguard of the weak; but they are out of place on impeachments. Here again I cite Edmund Burke:

"God forbid that those who cannot defend themselves upon their merits and their actions may defend themselves behind those fences and intrenchments that are made to secure the liberty of the people; that power and the abuses of power should cover themselves by those things which were made to secure liberty!" (Bond's Trial of Hastings, Vol. 1, p. 10).

And notwithstanding counsel's statement to the contrary, I challenge your attention to the fact that the trial of President Johnson proceeded

upon the theory outlined by Senator Sumner—the theory which we maintain should be adopted in this cause—and not upon the assumption advanced by the learned counsel for respondent, that the Senate in that proceeding adopted the procedure of the criminal courts and actually sat as a court in the trial of the cause. I refer you to volume 3 of Hind's Precedents of the House of Representatives, pages 378 to 383 inclusive, for a more detailed statement of the views taken by the Senate of the United States as to its functions in the Johnson case and in impeachment trials generally.

Decisions upon the precise question as to the nature of the impeachment proceeding are scarce. The question was raised, however, in the case of *The People of the State of Kansas against Theodosius Botkin*, tried before the Senate of Kansas in 1891.

In that case the Senate proceeded on the theory, acquiesced in by both parties, that the rules and procedure of criminal courts were not applicable. Mr. Douglas, on behalf of the managers, expressed his views as follows:

An impeachment proceeding is in no sense of the term a criminal proceeding. It does not seek to touch the property or the person of the offender. It is a civil proceeding wholly, having in view the removal from office of an incumbent who, upon trial, shall be determined to have demonstrated his unfitness, by reason of his acts, for his further continuance in office. It is a proceeding not to punish the individual but to protect the people. (1 Botkin Imp., 133).

And this view was not dissented from by respondent, his counsel, the distinguished Gen. Bradford, assenting thereto in the following language:

Now we come to the other proposition I desire to discuss. I don't think there is any possibility of a doubt but what a demurrer is the proper plea in this case. It is a civil proceeding; then the rules of pleading in civil cases will apply. A demurrer being a plea in a civil action, it is the proper plea to be filed in this case. If it were not—if this impeachment was a criminal trial—then why the subsequent provision of the constitution that, notwithstanding the fact that he is convicted or acquitted, he may be tried for the offense under the criminal law? Why, if it were not a civil trial you would run against this other provision of the constitution that says that no man shall be twice put in jeopardy for the same offense. The conclusion is irresistible that it is a civil proceeding and not a criminal one. You cannot put a man upon trial twice for the same offense. If Theodosius Botkin has committed a crime in the county of Seward and you put him upon his trial in impeachment for that crime, if the theory of some people is to be credited, it will be a bar to his being afterwards put on trial in the criminal courts or courts of competent jurisdiction for the crime he is alleged to have committed. We come to the conclusion that it is a civil proceeding and that a demurrer is a proper pleading to file. (1 Botkin Imp., 111).

The oath taken by the Senate in the Botkin case obligated the members, as you are obligated in this case, to "do impartial justice according to the law and the evidence." In discussing this obligation, Judge Webb, one of the managers, commented thereon as follows:

It may also be regarded as settled by your decision upon the demurrer to the articles that the case here is to be treated as a civil pro-

ceeding, not subject to the strict rules applicable to indictments and trials in criminal cases. There is no such thing here as "a question of reasonable doubt." The respondent, as just stated, is not on trial as a defendant in a criminal case, subject in case of conviction to punishment by fine and imprisonment, or either. In criminal actions a conviction or acquittal is a bar to all further prosecution for the same cause. In such case the rule, stated in our bill of rights, that "no person shall be twice put in jeopardy for the same offense," always applies, while the constitution itself expressly declares that in trials upon impeachment "the accused party, whether acquitted or convicted, shall be liable to indictment, trial, judgment and punishment according to law"; it follows, therefore, that a finding of "not guilty" or a failure to convict, cannot be pleaded in bar to any criminal prosecution which may be commenced against the respondent for any offense set forth in these articles of impeachment. There is then no ground for the claim that the proof must convince this court "beyond a reasonable doubt," in order to convict. Wanting the elements of reasonable doubt, not being punishable by fine or imprisonment, and our decision or finding, whatever it may be, not being a bar to further proceedings for the same cause, clearly prove that this is a civil proceeding—not criminal. The object of the prosecution is to remove the respondent from the office in which it is charged by the articles of impeachment he has been unworthy of the high trust reposed in him and has used the powers of his great office to the detriment of individual citizens and of the public. All that the state asks at your hands is that you observe the obligation of the oath which you have taken, that you "will do impartial justice according to law and the evidence"; and this oath I have faith to believe you will keep. (2 Botkin Imp., 1348-9).

In the impeachment of E. St. Julien Cox before the Senate of Minnesota, in 1881, this same question was fully considered in connection with a motion offered by one of the senators limiting the number of witnesses which might be called by either party. It was argued in respondent's behalf that "this is a criminal action, and all the principles of law applicable to cases tried in criminal courts should be applied in this court" (1 E. St. Julien Cox Imp., 204), and therefore that the adoption of the motion limiting the number of witnesses which he might call was an abridgment of his rights and of the rights incident to ordinary criminal actions. This contention was stoutly denied alike by the managers and several of the Senators. Senator D. Buck said:

I wish to say that this proceeding has none of the elements of a criminal proceeding. \* \* \* You cannot arrest this defendant, you cannot take his property, you cannot take his life, even if he were guilty of murder; you cannot imprison him within the walls of any jail. \* \* \* The charges are that he has committed certain crimes, but the *trial* is not a criminal proceeding. It is instituted only for the purpose of ousting the respondent from his office, not for the purpose of punishing him. \* \* \* It is a civil proceeding. Whoever before heard of a criminal proceeding to remove a man from office? (1 Cox Imp., 208-9-10).

The roll was called on the question, and Senator Buck's position was sustained by a vote of 14 to 9, and upon the theory thus defined the trial proceeded to its conclusion.

Another interesting case upon this subject is that of Judge Pickering, who was tried and convicted by the Senate of the United States in 1803 upon articles charging him with intoxication and the use of



profane and indecent language while engaged in the trial of causes in his court. The defense of insanity was made and supported by evidence, but Pickering was convicted and removed from office. The important element in the case as far as this present discussion is concerned is this: It establishes the fact that a *criminal intent* is not necessary to constitute an impeachable high crime or misdemeanor, but that the power of impeachment may be interposed to protect the public against the misconduct of an insane officer. It is, therefore, strongly corroborative of our theory, namely, that impeachment is a legislative and not a criminal proceeding.

Now, I am willing to admit that if this Senate were a court of general jurisdiction—if it were a court in which the respondent could be punished for the offense alleged in these articles of impeachment and it was necessary that he should be able to plead a conviction or acquittal in bar as to any separate or distinct offense, upon being subsequently charged—judged by these standards, several articles may be open to the objection which counsel has urged against them. But our contention is that in a court of impeachment an entirely different rule must of necessity prevail. The latitude is greater. The people, as was said in the Cox case, are not represented in the Lower House, where impeachments must originate, except by their chosen representatives; they are not necessarily represented by skilled law officers or skilled lawyers—at least if they are so represented, it is simply the good fortune of the people—and they are not always represented by gentlemen whose business it has been to give attention to these matters. Articles of impeachment are taken up in the usual course and amid the general rush of legislative business; that same nicety and time necessary to produce strictly legal indictments is not given and is not expected. And such, as you well know, is the history of the present articles, which, however deficient they may be as to form, are still, as we believe, amply sufficient as to substance.

Our contention that this is a legislative and not a criminal procedure, and is to be governed by parliamentary rules and not by the practice which obtains in the criminal courts, is amply sustained by the authorities, and of the many contained in my brief I will cite but two at this time. I refer you to page 988 of Cushing's Law and Practice of Legislative Assemblies, where this statement appears:

The articles thus exhibited need not and do not in fact pursue the strict form and authority of an indictment. They are sometimes quite general in the form of the allegations, but always contain, or ought to contain, so much certainty as to enable the party to put himself upon the proper defense, and also in case of acquittal to avail himself of it, as a bar to another impeachment. (Cushing's Law and Practice of Legislative Assemblies, p. 988).

I will next cite section 765 of Story's work on the constitution, an authority which you will recall was used by counsel for respondent in his arguments. This section is as follows:

In the next place, it is obvious that the strictness of the forms of proceeding in cases of offenses at common law is ill adapted to impeach-

ment. The very habits growing out of judicial employments, the rigid manner in which the discretion of judges is limited and fenced in on all sides, in order to protect persons accused of crimes by rules and precedents, and the adherence to technical principles, which perhaps distinguishes this branch of the law more than any other, are ill adapted to the trial of political offenses in the broad course of impeachments. And it has been observed with great propriety that a tribunal of a liberal and comprehensive character, confined as little as possible to strict forms, enabled to continue its session as long as the nature of the law may require, qualified to view the charge in all its bearings and dependencies, and to appropriate on sound principles of public policy the defense of the accused, seems indispensable to the value of the trial. (Story on Constitution, Sec. 765).

Our conclusion, therefore, is that this is not in any sense a criminal proceeding; that it is not to be governed by the rules which obtain in criminal trials; that these articles are not to be judged by the rules and precedents and technical principles employed in courts of law; and our position is, we maintain, sustained by most eminent authority.

Taking up the first part of respondent's second statement, which involves the inquiry as to what are impeachable offenses in this state, I will read section 2 of article 5 of our state constitution:

The governor, and other state and judicial officers, except judges and justices of courts not of record, shall be liable to impeachment for high crimes or misdemeanors or malfeasance in office.

It has been said that the Federal constitution is not an instrument of definition. This is also true of our state constitution, and particularly of the article now under consideration. It does not define either of the terms used therein, but leaves it to you to say what acts shall constitute "high crimes or misdemeanors" and what "malfeasance in office." The first of these phrases follows the language of the United States constitution, and the other is common to many of the state constitutions. We may look, therefore, to the parliamentary law of England for the meaning of "high crimes and misdemeanors," as it is generally conceded that both this phrase and the term "impeachment" were imported from the English law. Both English and American precedents will be consulted in determining what constitutes "malfeasance in office." In England any offense was punishable by impeachment that parliament chose to consider. Impeachable offenses were not defined in the English law by act of parliament or otherwise.

From Woodeson, the earliest text writer on this subject, we learn the undefined and expansive character of the offenses included within the phrase under discussion. I quote as follows:

It is certain that magistrates and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community and at the same time in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents and the nature of such offenses may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly. The Commons, therefore, as the grand inquest of the nation, become suitors for penal justice, and they cannot consistently, either

with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature.

On this policy is founded the origin of impeachments, which began soon after the constitution assumed its present form.

And again (p. 601):

Such kind of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are most proper, and have been the most usual grounds for this kind of prosecution. Thus, if a lord chancellor be guilty of bribery, or of acting grossly contrary to the duty of his office; if the judges mislead their sovereign by unconstitutional opinions; if any other magistrate attempt to subvert the fundamental laws or introduce arbitrary power, these have been deemed cases adapted to parliamentary inquiry and decision.

So where a lord chancellor has been thought to have put the seal to an ignominious treaty, a lord admiral to neglect the safeguard of the sea, an ambassador to betray his trust, a privy counsel to propound or support pernicious and dishonorable measures, or a confidential adviser of the sovereign to obtain exorbitant grants or incompatible employments, these imputations have properly occasioned impeachments, because it is apparent how little the ordinary tribunals are calculated to take cognizance of such offenses or to investigate and reform the general policy of the state.

Blackstone uses and phrases and states the punishment incident thereto as follows:

Misprisons which are merely positive are generally denominated contempts or high misdemeanors, of which the first and principal was the maladministration of such high officers as are in public trust and employment. *This is usually punished by the method of parliamentary impeachment*, wherein such penalties, short of death, are inflicted, as to the wisdom of the House of Peers seems proper, consisting usually of banishment, imprisonment, fines, or *perpetual disability*. (4 Blackstone, p. 121).

And equally broad is the declaration of Edmund Burke, manager of the impeachment of Warren Hastings. These are his words:

It is by this tribunal that statesmen who abuse their power are tried before statesmen and by statesmen upon solid principles of state morality. It is here that those who by an abuse of power have polluted the spirit of all laws can never hope for the least protection from any of its forms. It is here that those who have refused to conform themselves to the provisions of law can never hope to escape through any of its defects. (Bond, *Speeches on Trial of Hastings*, Vol. 1, p. 4).

Turning now to the American authorities, we find the *Federalist*, considered to be the highest authority at the adoption of the constitution, declaring that impeachment is for "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust; and they may, with peculiar propriety, be deemed *political*, as they relate to injuries done immediately to society itself." (*Federalist*, No. 65).

After Hamilton, Madison and Jay, the next great commentator on the constitution was Rawle, and in his splendid commentary we read, speaking of the Senate sitting for the trial of impeachments, that "the subjects of its jurisdiction are those offenses which proceed from the

misconduct of public men, or, in other words, from the abuse or violation of some public trust." (Rawle on Const., p. 201).

Then comes Story, and I call your attention to section 764 of his work on the constitution, which reads in part as follows:

In the first place, the nature of the functions to be performed, the offenses to which the power of impeachment has been, and is ordinarily applied as a remedy, are of a political character. Not but that crimes of a strictly legal character fall within the scope of the power (for, as we shall presently see, treason, bribery, and other high crimes and misdemeanors are expressly within it), but that it has a more enlarged operation, and reaches what are aptly termed political offenses, growing out of personal misconduct, or gross neglect, or usurpation, or habitual disregard of the public interests in the discharge of the duties of political office.

In section 797 this same thought is again expressed in this language:

Again, there are many offenses purely political which have been held to be within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute book. And, indeed, political offenses are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it.

And again in section 799:

Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any *official misconduct*. \* \* \* *In the few cases of impeachment which have hitherto been tried no one of the charges has rested upon any statutable misdemeanors.* (1 Story on Constitution, Sec. 799).

And again in section 800:

In examining the parliamentary history of impeachments, it will be found that many offenses not easily definable by law and many of a purely political character have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. (1 Story on Constitution, Sec. 800).

Also page 587:

While there is not a syllable in the constitution which confines impeachment to official acts, and it is against the plainest dictates of common sense that such restraint should be imposed upon it, suppose a judge should countenance or aid insurgents in a meditated conspiracy or insurrection against the government. This is not a judicial act, and yet it ought certainly to be impeachable. He may be called upon to try the very persons whom he has aided. Suppose a judge or *other officer* to receive a bribe not connected with his judicial office, could he be entitled to any public confidence? Would not these reasons for his removal be just as strong as if it were a case of an official bribe? (Story on the Constitution, p. 587).

According to Judge Story, therefore, an act to be impeachable need not have been done during the present term of the incumbent, or indeed during any term of office or even during any period of public employment. It is sufficient that the incumbent has been guilty of some act which raises the question of his fitness to hold office. And this, Mr. President and gentlemen of the Senate, we assert, and stand ready to prove, is the true rule in impeachment proceedings. Once you have de-

terminated that the respondent is *now* a "state officer" within the meaning of section 2 of article 5 of the state constitution, you may take cognizance of any offense committed by him, whether of an official or a private character, or committed while in or out of office, or during his present or a prior term, in testing his fitness for the office which he now occupies. And while it is a slight digression from my main discussion, I am anxious, nevertheless, to impress this thought upon you, for it is evident from the demurrers and the affirmative answer interposed by the respondent that it will have an important bearing upon the result in this cause. In talking with one of your number only last evening, I was asked whether a private citizen can be impeached; and that I may make myself clearly understood at this time, and that our contention may be removed entirely from the realm of doubt, I say to you now as I said then, that you cannot impeach a private citizen, but you can impeach a state officer for misconduct as a private citizen committed in private life. And so for the purposes of this case it matters not that the things charged against this respondent were done by him while a deputy in the office of the insurance commissioner of this state. The *capacity* in which the act was done is unimportant; *the character indicated by the doing of the act is all important.*

Of the many cases which bear upon this question, I will now refer to but two. In the case of the State of Iowa vs. Welsh, decided in 1899, and which was an action to remove the defendant from the office of sheriff, Justice Ladd, delivering the opinion of the court, said:

The defendant was re-elected sheriff of Johnson county at the general election of 1898 and during his second term, commencing January 1 of the year following, this action for his removal was begun. On motion, the particular averments of official misconduct and neglect of duty during the first term were stricken from the petition on the ground that removals are only allowable for acts during the term being served.

And now mark this:

The statute contains no such limitation. The very object of removal is to rid the community of a corrupt, incapable or unworthy official. His acts during his previous term quite as effectually stamp him as such as those during that he may be serving. Re-election does not condone the offense. Misconduct may not have been discovered prior to election, and in any event had not been established in the manner contemplated by the statute. \* \* \* This has been the uniform rule in impeachment trials where coupled with removal from office is the penalty of disqualification to hold any office of honor, trust or profit under the state.

In New York, Judge Barnard was impeached during his second term for acts committed in that previous. The same was true of the impeachment of Judge Hubbell, of Wisconsin, and Governor Butler, of Nebraska. \* \* \* The commission of any of the prohibited acts the day before quite as particularly stamps him as an improper person to be intrusted with the performance of the duties of the particular office as though done the day after. The fact of guilt with respect to that office warrants the conclusion that he may no longer with safety be trusted in discharging his duties.

The other case to which I will refer upon this phase of the question is that of the People of the State of New York vs. George G. Barnard, a justice of the supreme court. I ask your indulgence while I quote this decision at some length, and I challenge the learned counsel for the respondent to produce a single authority which holds to the contrary.

Justice Barnard was represented by most eminent counsel, and for a statement of his defense I will quote the language of William A. Beach, one of the four able lawyers who appeared in respondent's behalf. Mr. Beach said:

It will be perceived, Mr. President, that the plea now presented on behalf of the respondent raises the question whether he is liable to impeachment for acts which were committed prior to his present tenure of office. It is upon both sides conceded that previous to the first day of January, 1869, Justice Barnard occupied the same position in which he is now placed in the judiciary of the state. In the fall of 1868 he was re-elected and on the first day of January, 1869, he took his place upon the bench by force of that election in possession of a new tenure of office. Into that possession he came anew by virtue of an election by the people, approved by their judgment, certified as capable, and worthy to occupy the position and discharge the duties of a justice of the supreme court of this state; and the question is presented by this plea whether any power is conferred by the constitution upon the Assembly and Senate of this state to impeach and convict a judge thus certified and endorsed by a constituent body as capable and worthy for acts which transpired before that selection and indorsement were made by the people. (1 Barnard Imp., 151).

A more analogous case, or one more decisive of the precise question which we are now considering, cannot, in my opinion, be found. There was no attempt by either of the parties to evade or disguise the issue thus presented, for it was conceded that its determination was vital to the entire proceeding. Mr. Van Cott, counsel for the board of managers, answered Mr. Beach. He said:

I think the opinion of the last Assembly upon a question of this kind may perhaps be as weighty as the opinion of a previous Assembly, and the last Assembly voted that Albert Carozo was impeachable for acts done in his previous term of office; they voted that George G. Barnard was impeachable for acts done in his previous term of office; they voted that John H. McCunn was impeachable for acts done during his previous term of office. \* \* \* This Senate voted in the case of Judge Prindle that he could be prosecuted for acts done during a previous term of office and that his election to another term had not the purging and condoning effect claimed for it by my learned friend. I put the opinion of the Senate in the case of Judge McCunn, the Senate trying him for acts done in a previous term of office, \* \* \* against the opinion of any previous Senate. (1 Barnard Imp., pp. 168-9).

Mr. President, that part of Judge Van Cott's argument which follows may well engage the attention of every member of this body. Mr. Van Cott continued:

I attach as much weight to the popular vote as any man—not an indiscriminate reverence for it, for the people do a great many wise things and a great many foolish ones, just as individuals do in the course of their lives. The people have certain powers under the constitution and within the scope of their authority; I bow with reverence

to their decisions \* \* \* But if a man who has taken bribes in office, if a man who has perverted the law, if a man who has committed perjury, is elected by the people to office, is the offense purged away? If he was elected in the month of November to serve the people for a legislative term and committed a forgery in October and was indicted in December and convicted, but becomes the popular representative for that term, my learned friends here argue that the people who elected him are entitled to be represented and that you take away their representation; but have the people any power by the popular vote to condone the offense of perjury and of forgery and of bribery? Is it an answer in a case where he is indicted in October that the accused was elected in November? Is it any answer to any liability for any crime known to any law administered in any court that the criminal has been elected to some office by the people? \* \* \* The constitution says that the Assembly is the grand inquest of the state. \* \* \* I want to know where that higher power under the constitution is lodged than that power which the constitution itself has lodged in the Assembly to be accuser, and the power it has lodged in this court, to bring great and high offenders to judgment. \* \* \* The people have said: "We put him in from what we know or think of him." You put him out for what you discover and prove against him. If we have by mistake put in a criminal, you by the exercise of your constitutional power purge the office of the officer and see that fit men fill the offices of the state. Sir, there is no such thing as a popular condonation of a crime. It is no answer to an indictment, it is no answer to an impeachment, it is no answer anywhere. The people have nothing to do but elect, and the man who is elected takes his office and holds it under the tenure of the constitution, subject to all the liabilities which attach to him, and to all the powers of the departments of government over him. (1 Barnard Imp., pp. 170-1).

At the conclusion of the argument the presiding officer stated the question as follows: "The question is whether this plea shall be sustained as to proof of facts before the last election of respondent," and thereupon respondent's plea was overruled by a vote of 23 to 9. His trial proceeded under this ruling and he was convicted and removed from office.

The decision in this case appeals to us with greater force when it is recalled that the constitution of the state of New York has expressly declared that the impeaching body of that state shall when sitting as such exercise judicial and not legislative or political functions. Sec. 32 of the constitution of 1777 is as follows:

And this convention doth further, in the name and by the authority of the good people of this state ordain, determine and declare that a *court* shall be instituted for the trial of impeachments and the correction of errors under the regulations which shall be established by the legislature.

—And in article 6 of the constitution of 1846 the court for the trial of impeachments is made to consist of the president of the Senate, the senators and the justices of the court of appeals.

Now, if the rule invoked by the respondent in this case has no place in proceedings before a judicial body composed in part of the justices of the court of appeals of the state of New York, upon what theory is it entitled to consideration by a body not bound by the technicalities or

the strictness of judicial proceedings, and sitting, as I believe you must decide, for the exercise of legislative and political functions.

The Senate, sitting as a court of impeachment, at 12 o'clock took a recess until 1:30 p. m.

## AFTERNOON SESSION.

At 1:30 the Senate reconvened as a court of impeachment, with Senator Presby presiding.

BY MR. MANAGER MEIGS: *Mr. President and Gentlemen of the Senate*—When we took the recess at the noon hour I had finished my reference to the Barnard case. I will now revert to the first portion of respondent's second proposition, involving the inquiry as to what are impeachable offenses in this state.

Curtis, in his History of the Constitution, has this to say:

Although an impeachment may involve an inquiry whether a crime against any positive law has been committed, yet it is not necessarily a trial for crime, nor is there any necessity, in the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offenses against positive law. The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object to the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact, that either in the discharge of his office, *or aside from its functions*, he has violated a law, or committed what is technically denominated a crime. *But a cause for removal from office may exist where no offense against positive law has been committed, as where the individual has from immorality or imbecility or maladministration become unfit to exercise the office.* (2 Curtis, p. 260).

Roger Foster in his commentations on the constitution of the United States, expresses the same conclusion as follows:

The object of the grant of the power of impeachment was to free the commonwealth from the danger caused by the retention of an unworthy public servant. (1 Foster's Com. on Const. of U. S., p. 569).

Again, page 591, this statement:

An impeachable offense may consist of treason, bribery or a breach of official duty, by malfeasance or misfeasance, including conduct such as \* \* \* an abuse or reckless use of discretionary power.

And again:

The only difficulty arises in the construction of the term "other high crimes and misdemeanors." As to this, four theories have been proposed: That, except treason or bribery, no offense is impeachable which is not declared by a statute of the United States to be a crime subject to indictment. That no offense is impeachable which is not



subject to indictment by such a statute or by the common law. That all offenses are impeachable which were so by that branch of the common law known as the "Law of Parliament." And that the House and Senate have the discretionary power to remove and stigmatize by perpetual disqualification an officer subject to impeachment for any cause that to them seems fit. The position that, except treason or bribery, no offense is impeachable which is not indictable by law was maintained by the counsel for the respondents on the trial of Chase and Johnson \* \* \*.

The first two theories are impracticable in their operation, inconsistent with other language of the constitution, and overruled by precedents. If no crime, save treason and bribery, not forbidden by a statute of the United States, will support an impeachment, then almost every kind of official corruption or oppression must go unpunished. Suppose the chief justice of the United States were convicted in a state court of a felony or misdemeanor, must he remain in office unimpeached and hold court in a state prison?

The term "high crimes and misdemeanors" has no significance in the common law concerning crimes subject to indictment. It can be found only in the Law of Parliament, and is the technical term which was used by the Commons at the bar of the Lords for centuries before the existence of the United States.

The constitution provides that—

The judges, both of the supreme and inferior courts, shall hold their offices during good behavior.

This necessarily implies that they may be removed in case of bad behavior. But no means except impeachment is provided for their removal, and judicial misconduct is not indictable by either a statute of the United States or the common law.

*In 1803, Pickering, a district judge of the United States, was convicted on impeachment for his official action in surrendering to the claimant, without requiring the statutory bond, a vessel libeled by the United States, for refusing to allow an appeal from this order. AND FOR DRUNKENNESS AND PROFANE LANGUAGE ON THE BENCH.*

None of these offenses was indictable by the common law or by statute.

Humphreys, a district judge of the United States, was convicted on impeachment, not only for treason, but also for refusing to hold court, and for expressing sympathy with the Union. The managers of the House of Representatives who opened the case admitted that none of those offenses except treason was indictable. \* \* \*

Impeachable offenses are those which were the subject of impeachment by the practice in parliament before the Declaration of Independence, except in so far as that practice is repugnant to the language of the constitution and the spirit of American institutions. An examination of the English precedents will show that, although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in the office or some offense which was injurious to the welfare of the state at large.

In the class of cases which rests so much in the discretion of the Senate the writer would be rash who were to attempt to prescribe the limits of its jurisdiction in this respect. (Foster on the Constitution).

Among the law writers in this country there are few, if any, who have wielded a greater influence than John Norton Pomeroy. We turn then to his splendid work on the Federal constitution, written with the combined testimony of English and American history be-

fore him, and with a desire only for truth, and find him recording his opinion in words which read like a judgment. Discussing the question, "What are the lawful grounds for impeachment?" he says:

Two answers have been given to this question, resting upon the opposed theories of constitution. One theory, maintained with great ability, both upon principle and authority, by a large school of public writers, confines the operation of the impeachment clause within very narrow limits. According to it, an impeachment can only be preferred against an officer of the United States, on account of some indictable offense which he has committed. (Pomeroy Const. Law, 600).

The second theory \* \* \* regards the process of impeachment as the important personal sanction by which the observance of official duties is secured, as the very keystone by which the arch of constitutional powers is held in place \* \* \* Wherever the president or vice-president, or any civil officer, has knowingly or intentionally violated the express terms of the constitution, or of a statute which charged him with an official duty to be performed without discretion, and wherever a discretion being left, within the bounds of which he has ample choice, he exercises that discretion in a willful and corrupt manner, or even in a rash and headstrong manner, unmindful of the ruinous consequences which his acts must produce, he is impeachable; and it makes no difference whether the act has been declared a felony or a misdemeanor by the criminal legislation of congress, or was regarded as such by the common law of England \* \* \* (Pomeroy Const. Law, p. 602).

These two theories will now be subjected to a brief examination, and considerations will be suggested which seem to support the latter, and give it a preference over the one first stated. A fallacy which oftens enters into discussions upon the meaning of language is the tacit or open assumption that two alternatives alone are possible; that if one extreme is rejected, the very opposite of this position must be admitted. The fallacy is shown in the present case. It may be said, it is said, that if the House be not restricted to indictable crimes, they may impeach whenever a majority shall chose—they may impeach for a mere difference of opinion. This argument, *ab inconvenienti*, though often resorted to, is of little value. The possible abuse of power is no valid objection to the existence of power. The constitution is full of grants which may be abused; wherever there is discretion, there may be abuse. Indeed, it was because discretion must be given, and is liable to abuse, that the convention and the people, after exhausting all the checks of a tripartite government and of frequent elections, inserted the particular and most compulsive sanction of impeachment \* \* \* (Pomeroy Const. Law, p. 603).

As far as the House of Representatives and the Senate have acted, under the impeachment clauses, their proceedings have been directly opposed to the first theory, and in strict accordance with the second. It must be remembered that, if the argument for a restrictive interpretation be valid for any purpose, it proves that the impeachment is only lawful when the officer has been guilty of a statutory offense against the United States. To say that he may be impeached for an act which would be indictable by the English common law, though not made so by the legislation of congress, is to surrender the whole position. If the House may prefer charges for conduct which is not penal by the laws of the United States, but is criminal by that of England, they are of course entirely untrammelled. The legislation of another nation, whether statutory or unwritten, cannot be a rule of conduct for the United States government—cannot be the measure of its power. How, then, does the fact stand? The House has preferred an impeachment in five cases. The first was dismissed by the Senate on the prelim-

inary objection that the respondent was not a civil officer. The other four were tried on the merits. In three of these cases not a charge was made in the articles of impeachment presented by the House which impute an indictable statutory crime to the respondent; most of the charges did not even impute a common law misdemeanor; all, with perhaps a single exception, alleged a corrupt or willful violation of official duty. In the fourth case the offense was treason \* \* \* (Pomeroy Const. Law, p. 604).

The House, in proposing articles, and the Senate, in trying the accusations, have therefore given a practical construction to the constitution. In doing so they have not restricted its operation within narrow limits, and have not confined the proceeding by impeachment to indictable crimes against the United States. (Pomeroy Const. Law, p. 605).

The writer continues:

We must adopt the second and more enlarged theory, because it is in strict harmony with the general design of the organic law, and because it alone will effectively protect the rights and liberties of the people against the unlawful encroachments of power. Narrow the scope of impeachment, and restraint over the acts of rulers is lessened. If any fact respecting the constitution is incontrovertible, it is that the convention which framed, and the people who adopted it, while providing a government sufficiently stable and strong, intended to deprive all officers, from the highest to the lowest, of an opportunity to violate their public duties, to enlarge their authority, and thus to encroach gradually or suddenly upon the liberties of the citizen. To this end elections were made as frequent, and terms of office as short, as we deemed compatible with an uniform course of administration. But lest these political contrivances should not be sufficient, the impeachment clauses were added as a sanction bearing upon the official rights and duties alone, by which officers might be completely confined within the scope of the functions committed to them (Pomeroy Const. Law, p. 608).

The same consideration will apply with equal force to the branch of the argument which is based upon the phrase "high crimes and misdemeanors." Even had the words been "felonies and misdemeanors," we should not be obliged to take them in strict technical sense; they would be more susceptible of a more general meaning descriptive of classes of wrongful acts, of violations of official duty punishable through the means of impeachment \* \* \* (Pomeroy Const. Law, p. 609).

I now ask your attention to a brief upon this subject written by Judge William Lawrence, of Ohio, in 1867, and published in the 6th volume of the American Law Register (new series). I will read but a small part of the same. Upon page 644 he says:

It is absurd to say that impeachment is here a mode of procedure for the punishment of crime, when the constitution declares its object to be removal from and disqualification to hold office, and that "the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law, for his crimes." Subject to these modifications, and adopting the recognized rule that the constitution should be construed so as to be equal to the occasions for its exercise, and to accomplish the purpose of its framers, impeachment remains here as it was recognized in England at and prior to the adoption of the constitution. These limitations were imposed in view of the abuses of the power of impeachment in English history. (6 American Law Reg., p. 644).

But it is not material whether the words "treason, bribery or other

high crimes and misdemeanors" confer or limit jurisdiction, or only prescribe an imperative punishment as to officers or a class of cases, since every act which by parliamentary usage is impeachable is defined a "high crime or misdemeanor"; and these are the words of the British constitution which described impeachable conduct. (6 Amer. Law Reg., p. 645).

Again, on page 655:

The framers of our constitution, looking to the impeachment trials of England, and to the centers on parliamentary and common law, and to the constitution and usages of our own states, said that no act of parliament, or of any state legislature, ever undertook to define an impeachable crime. They said that the whole system of crimes, as defined in acts of parliament and as recognized at common law, was prescribed for, and adapted to the ordinary courts. They said that the high court of impeachment took jurisdiction of cases where *no indictable crime had been committed* in many instances, and there were then, as there are yet, "two parallel modes of reaching" some, but not all, offenders—one by impeachment, the other by indictment.

Again, on page 647:

All this is supported by the elementary writers, both English and American, on parliamentary and common law; by the English and American usages in cases of impeachment; by the opinions of the framers of the constitution; by contemporaneous construction, all uncontradicted by any author, authority, case, or jurist, for more than three-quarters of a century after the adoption of the constitution. The authorities are abundant to show that the phrase "high crimes and misdemeanors," as used in the British and our constitution, are not limited to crimes defined by statute or as recognized at common law. Christian, who may be supposed to have understood the British constitution when he wrote, says: "When the words 'high crimes and misdemeanors' are used in prosecutions by impeachment, the words 'high crimes' have no signification, but are used merely to give greater solemnity to the charge." Wooddeson, whose lectures were read at Oxford in 1777, declared that impeachment extended to cases of which the ordinary courts had no jurisdiction. He says: "Magistrates and officers \* \* \* may abuse their delegated powers to the extensive detriment of the community, and at the same time in a manner not properly cognizable before the ordinary tribunals." And he proceeds to say the remedy is by impeachment.

English history presents many examples of this kind. Indeed, the word "misdemeanor" has a common law, a parliamentary, and a popular sense. In the parliamentary sense, as applied to officers, it means "mal-administration" or "misconduct," not necessarily indictable, not only in England, but in the United States.

Demeanor is conduct, and he is guilty of misdemeanor who misdeems or misconducts.

Again, on page 666:

There are many breaches of trust not amounting to felonies, yet so monstrous as to render those guilty of them totally unfit for office.

Nor is it always necessary that an act to be impeachable must violate a positive law. There are many misdemeanors in violation of official oaths, and of duty, alike shocking to the moral sense of mankind and repugnant to the pure administration of office, that may violate no positive law.

Judge Cooley, in his valuable work on Constitutional Law, states the same proposition as follows:

Impeachment is for the purpose of punishing misconduct \* \* \* The offenses for which the president or any other officer may be impeached are any such as in the opinion of the House are deserving of punishment under that process. They are not necessarily offenses against the general laws. In the history of England, where the like proceeding obtains, the offenses have often been political, and in some cases for gross betrayal of public interests punishment has very justly been inflicted on cabinet officers. It is often found that offenses of a very serious nature by high officers are not offenses against the criminal code, but consist in abuses or betrayals of trust, or inexcusable neglects of duty, which are dangerous and criminal because of the immense interests involved and the greatness of the trust which has not been kept. Such cases must be left to be dealt with on their own facts, and judged according to their apparent deserts. (Cooley on Const. Law, p. 178).

And to the same effect is this statement found in Black's Constitutional Law:

Any gross malversion in office, whether or not it is a punishable offense at law, may be made the ground of an impeachment. But the power of impeachment is not restricted to political crimes alone. The constitution provides that the party convicted upon impeachment shall still remain liable to trial and punishment according to law. *From this it is to be inferred that the commission of any crime which is of a grave nature, though it may have nothing to do with the person's official position, except that it shows a character or motives inconsistent with the due administration of his office, would render him liable to impeachment.* (Black's Const. Law, p. 121).

The next authority from which I will read is the American and English Encyclopedia of Law. It states what it considers to be the settled doctrine of impeachments in this country, as follows:

In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant was found guilty of offenses not indictable either at common law or under any Federal statute, and in almost every case brought offenses were charged in the articles of impeachment which were not indictable under any Federal statute, and in several cases they were such as constituted neither a statutory nor a common law crime. The impeachability of the offenses charged in the article was, in most of the cases, not denied. In one case, however, counsel for the defense insisted that impeachment would not lie for any but an indictable offense, but after exhaustive argument on both sides this defense was practically abandoned. *The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase "high crimes and misdemeanors" is to be taken not in its common law but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruptions, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of state, although such offenses are not of a character to render the offender liable to an indictment either at common law or under any statute.* Additional weight is added to this interpretation of the constitution by the opinions of eminent writers on constitutional and parliamentary law and by the fact that some of the most distin-

guished members of the convention that framed it have thus interpreted it. (Am. & Eng. Enc. of Law, Vol. XV, p. 1066).

I have taken so much time in the citation of these various authorities that I deem it unnecessary to go into a discussion of the various impeachment cases where this matter has been discussed and decided. I refer you, however, to the impeachment of E. St. Julien Cox and of Sherman Page in Minnesota, George G. Barnard in New York, Theodosius Botkin in Nebraska, and the various impeachments tried before the United States Senate, in all of which the principle for which the respondent in this case is contending was determined adversely thereto.

It is manifest, then, that the only question of construction with which we are concerned has to do with these phrases "high crimes or misdemeanors" and "malfeasance in office," and it is our contention under the authorities cited, that as applied to public officers, they mean any misconduct, official or otherwise, in or out of office, which is sufficiently gross to justify the removal of the officer from the office which he disgraces; and it may be a comparatively simple offense or it may rise to the dignity of treason.

But, notwithstanding, we contend that we are not obliged to charge the respondent in this case with an indictable offense at common law or under the statute, we are prepared, as we believe, and ready to show to this Senate that the respondent has committed an indictable offense, both at common law and under the statutory law of this state. Our constitution, among other things, declares in substance the following principles: *First*, that no person shall exercise authority to whom it has not been delegated by law; *second*, that no person to whom authority is delegated shall exercise it except according to law; *third*, that if any officer exercises authority without law or contrary to law, he shall be liable to punishment by impeachment or indictment or by both.

Section 1730, Pierce's Code (title, "Crimes by Public Officers") is as follows:

If any officer whose fees are stated by law shall corruptly exact or extort any greater fees for any services than by law are stated and allowed, or shall levy, demand, receive, or take under color of his office any bond, bill, or note, or other assurance or promise whatever, securing the payment of a greater sum of money for any service than he is by law authorized to demand or receive, he shall, on conviction thereof, be imprisoned in the county jail not exceeding one year and be fined in any sum not exceeding one thousand dollars.

The state constitution created the office of secretary of state. Section 5615 of Pierce's Code makes the secretary of state *ex officio* insurance commissioner of the state. Section 5648 of the Code makes it mandatory upon the secretary of state to appoint a deputy insurance commissioner, and fixes the powers, duties and salary of such deputy.

By virtue of these provisions, the respondent became deputy insurance commissioner of this state, and, upon the authority of Mechem and other writers upon the subject of public officers, became an officer within the meaning of section 1730 of Pierce's Code, which prohibits

an officer whose fees are stated by law from exacting or extorting any greater fees for any service than by law are stated and allowed.

Turning now to sections 5636 and 5649 of Pierce's Code, we find that the respondent had the power and authority to require in advance certain entrance fees from insurance companies before issuing to such companies certificates of authority to transact business in this state. These fees were as follows:

For filing articles of incorporation, or certified copies of articles, or other certificates required by law, \$25; issuing certificates of authority, \$10; for filing annual statement of condition, \$10; for filing each annual statement of business transacted in this state, \$10; for filing any other paper, \$1; for furnishing copies of papers filed, twenty cents per folio; for certifying copies, \$1 each; each fire insurance agent, \$2; each life insurance agent, \$5: *Provided*, That all fees so collected shall be paid into the state treasury (Pierce's Code, Secs. 5636 and 5649).

Another section (5621 Pierce's Code) authorized either the insurance commissioner or the respondent to repair, whenever necessary, to the general office of non-resident companies for an examination of the affairs of such companies.

The next section (5622 Pierce's Code) provided for the payment of the expenses incident to such examination in these words:

The expenses of every examination or other investigation of the affairs of any organization, pursuant to the authority conferred by the provisions of this act, shall be borne and paid by the corporation so examined. No charge shall be made for any examination of an insurance organization except for necessary traveling and other actual expenses incurred.

Now, it was in violation of these plain provisions of the law that the respondent made the unlawful demands charged against him in the articles of impeachment, and received, as he admits, various sums of money ranging from \$50 to \$300, according to his victim's willingness to pay; it was in violation of these statutory provisions that he admitted insurance organizations to the State of Washington without examination and upon no other conditions than that of compliance with his extortionate demands.

In justification of this practice, the respondent has stated that these sums were collected to insure the expenses which would be incurred in prospective examinations and to keep out what he has designated as "wild-cat insurance companies." But how weak and unavailing is this defense in the light of the next paragraph of this same section of the Code. The language is as follows:

All charges for making an examination shall be presented in detail and shall be paid by the organization examined. Should payment be refused, the bill shall be approved by the commissioner, audited by the state auditor and paid on his warrant drawn in the usual manner on the state treasurer to the person making the examination. The commissioner shall revoke the certificate of authority granted the company that refuses to pay the bill for expenses of examination and shall not again grant it a certificate of authority until it has paid to the state treasurer the amount of such bill. (Pierce's Code, Sec. 5622).

Mr. President, view this man's conduct from any angle which you care to assume, throw around it all the excuses which friendship and sympathy can invent, give him the benefit of the doubt that lodges in every generous heart, and the conviction remains that we are here dealing with a man who has prostituted and perverted alike his talents and his office; a man whose motives are entirely inconsistent with the due administration of office; a man who has been guilty of flagrant violations, both of the moral and statutory law; a man who has in every way shown himself a grafter and wholly unfit and unworthy to occupy a place of trust or of honor in our state government.

Every act charged against the respondent, except those contained in articles 24, 25 and 26, was done by him in his official capacity. If he had not been deputy insurance commissioner of the State of Washington, he could not have patrolled the state's borders, and levied his unjust, oppressive and extortionate charges upon the patrons of the insurance department of this state. The stamp of his official authority and official character is on his every act. His official position enabled him to do what he did do. We think, therefore, that we have fairly sustained the position that the allegations in these articles accuse the respondent here, both at common law and the statutory law of this state, or certainly by one or the other, of impeachable offenses within the meaning of the constitutional phrases "high crimes or misdemeanors" and "malfeasance in office."

I will now take up counsel's last proposition, namely: that even if the facts set out in article 1 constitute an impeachable offense or matter on which an article of impeachment can be predicated under the constitution and laws of the State of Washington, then the right to so assert such facts is and was barred by the statute of limitations of the State of Washington prior to the filing of the articles of impeachment herein.

This precise question has been raised in a number of well-considered cases, and not in a single instance has the question been decided favorably to respondent's contention. The first of these cases to which I will direct your attention is that of Charles Swayne, a judge of the district court of the United States for the Northern District of Florida, who was tried by the Senate of the United States in 1905 for high crimes and misdemeanors in office. The principle offenses charged against Judge Swayne occurred more than four years before articles were exhibited against him, and one of the articles charged an offense of more than ten years standing. In preparing the articles of impeachment, three members of the committee appointed for that purpose objected to the incorporation into the articles of what they termed "stale charges," and when the articles were filed with the House, these same members presented their views in a report, which may be found in Vol. 2, Serial No. 4761 Misc. Rep. 58th Congress, 3rd Session House Representatives, 1904-5.

It is well to bear in mind at this point that under the Federal statutes, with the exception of a prosecution for treason or murder, no



person can be brought to trial unless the indictment be returned against him within three years from the date of the commission of the offense. Now, with this statute of limitations unquestionably in mind, we find C. E. Littlefield, conceded to be one of the ablest lawyers and one of the most distinguished men who has ever occupied a place in the lower branch of Congress, subscribing to the following statement as a minority member of the committee:

The car incident occurred more than ten years ago and no residence question has existed for more than four years. *No statute of limitations can apply*, but the great proceeding of impeachment is not to be used as to stale charges not affecting the moral character or the present fitness of the officer to perform his duty.

Now, what position did Judge Swayne's able counsel take relative to the application of the statute of limitations to the offenses charged against him? Did they invoke its protection by way of demurrer, as has been done by respondent in this case? No, indeed. They expressed their conviction that the statutes of limitation did not apply in impeachment cases, and in defending on the merits as to the charges referred to merely argued that it was contrary to the policy of the law for a tribunal to consider stale claims. Mr. Thurston, in his closing argument for Judge Swayne, said:

I do not stand here to insist that as a matter of law the limitations statutes of the United States apply in an impeachment case any more than I would insist that the statute of limitations of the several states in regard to civil actions apply in courts of equity as against the prosecution of equitable claims. (Swayne Imp., p. 667).

In the Barnard case the statute of limitations was invoked by counsel for the respondent, and the following argument was made by Mr. Bartlett in favor of its application as against certain evidence offered by the managers:

But it is inadmissible for another reason, and that is under the rules of evidence as adopted by this court. One of these rules is that the court will be governed by the rules of common law except as modified by the statutes. Now the common law rules as modified by the statutes in this state forbid the interposition of any crime committed more than three years prior to the indictment. There is no allegation that an indictment has been found in this case. The act charged is charged as having been committed more than three years ago; therefore, as the party is not liable to indictment in point of time, if he had been liable to indictment at any time, this evidence is inadmissible. I stand upon the strict letter of the constitution, which admits of but one interpretation, and of the revised statutes, by which all offenses except murder are outlawed within three years from the time of their commission. (1 Barnard Imp., p. 564).

The question was put to a vote, in which not only the Senate, but the five justices of the court of appeals—Judges Church, Folger, Allen, Peckham and Rapallo—participated, and of that illustrious body not one vote was cast in support of respondent's contention. (Barnard Imp., p. 565).

In 1891 Judge Botkin was impeached by the House of Representatives of the State of Kansas upon articles which charged, among other

offenses, that of drunkenness, in violation of paragraph 2519 of the Laws of Kansas. This same statute required that prosecutions of this charge be instituted within thirty days after the commission of the offense, and, inasmuch as the acts charged against Judge Botkin extended over a period of several years, not one coming within the thirty days' limitation of the statutes, his counsel presented a demurrer as to all of the articles containing charges of intoxication. The following colloquy between senators and counsel states the question fairly and clearly:

SENATOR LONG—By reference to the succeeding section to the one you have quoted, the prosecution must be begun within thirty days?

MR. DOUGLAS—Yes, sir.

SENATOR LONG—Would the statute of limitations apply to that case?

MR. DOUGLAS—Most certainly not. An impeachment proceeding is not a criminal proceeding. It is a mere proceeding to ascertain whether or not an officer had demonstrated his unfitness for office and whether or not he should be removed from office. If the impeachment proceedings were bound by the thirty days' statute of limitations, the power of impeachment as to such offenses would generally be nugatory, because the machinery of impeachment could rarely be set in motion in that time. I affirm without fear of successful contradiction that such a statute of limitations has no force or binding effect in a proceeding of this kind. (1 Botkin Imp., p. 156).

Attorney General Ives expressed his opinion on the question in the following language:

What effect would the statute of limitations have upon a charge of drunkenness in public places? I would say this: that if the Senate sustains these articles of impeachment and Judge Botkin is removed from office, the statute of limitations have run and he may not be punished for any acts of drunkenness committed more than thirty days before the complaint was filed. I do not understand the statute of limitations to be so broad that in thirty days after a man has been engaged in a spree and has made an exhibition of himself in a drunken and intoxicated condition in public places, it wipes out the fact of the moral turpitude, that it wipes out the fact that he was drunk and was disgracing himself and the position he occupied \* \* \* The statute of limitations, so far as applied to actions in this court, I think, has no application, and the question here to determine is, was the act one of such moral turpitude that it lowered the dignity of the court and the position that Judge Botkin occupied at that time? Thirty days do not wipe out the disgrace, although they may have placed him in such a position that the criminal laws of the state cannot call upon him to answer for that offense even when removed from office. (Botkin Imp., p. 180).

The question was submitted, and on a vote of three to one the demurrer was overruled by the Senate and the contention of the managers and attorney general sustained.

From our examination of the authorities, we conclude then that the language of the constitution is not to be technically construed; that this proceeding has to do primarily with the moral fitness of J. H. Schively to occupy as principal the office which as deputy he outraged, disgraced and debauched.

Was it morally or legally right or just for John H. Schively, deputy insurance commissioner, to falsely state to applicants to engage in the insurance business in this state the requirements of the statute, and receive in violation of the law for his expenses in making examinations as such deputy insurance commissioner amounts in excess of the said expenses? Was it morally or legally right for John H. Schively as such deputy insurance commissioner of the State of Washington to exact from the patrons of his office sums of money ranging from \$50 to \$300 for pretended services and never render the service, placing the money in his own pocket and making no accounting therefor, either to the individual robbed or to the state which he disgraced?

You, Mr. President and gentlemen of the Senate, are the judges of these questions now, but posterity will be your judge, and, as I expect your verdict will be that it is never morally or legally right that a man may so violate the laws and bring into disrepute the office which he holds, so will the verdict of posterity be that you have declared the law aright.

BY ATTORNEY GENERAL BELL: *Mr. President and Gentlemen of the Senate*—I will not detain you but a very few moments to make further argument on this demurrer, as my learned colleague has argued this matter fully, both as to the character and jurisdiction of this tribunal and the offense charged. He has shown conclusively that this is not a criminal court, and that it is not necessary to charge a *crime* in the articles of impeachment, but that it is only necessary to charge such an offense as will show the unfitness of the accused to hold office, and I shall simply take up the one proposition—that is that the first article of impeachment states facts sufficient to constitute a cause of impeachment and sufficient ground for the removal of the defendant from the high office which he now holds. It was stated in the trial of Judge Prescott, which has been cited by my learned counsel, that it was not necessary to charge the offense in the impeachment proceedings with the same particularity that should obtain in an indictment or an information. This is true, for the reason that this is not a criminal proceeding, and it is particularly provided by law that his conviction will not bar his being tried for the same offense in a criminal proceeding. In a criminal case the accused is entitled to have not only the offense charged with such particularity that he can readily show if rearrested that he has been tried before on the same charge, but also to be given full notice as to the offense charged, so that he can prepare his defense. This article charges all that it is necessary to charge. The learned counsel for the defense does not maintain that he has not full notice of the offense charged, the time when the offense is alleged to have been committed, the amount of money that respondent is accused of having received, and that he never paid the same over to the state. But he contends that he may have used this money for the purpose for which he claimed it was collected—that is, for the payment of his expenses in making the examination of the company or companies—or that he might have been

advised by the attorney general that he had a right to collect money in advance, and then, even though he had not expended the money for making examinations, that he would be protected. If these facts exist, we maintain that they should be pleaded as his defense, and not to be charged by the state in describing the offense. In other words, the gist of this offense is the taking of the fee in advance. It has been frequently held in numerous cases that the mere fact of taking a fee in advance is a crime. Here is a Massachusetts case, where a jailer took only twenty cents in advance, and it was held that he was guilty of the crime of extortion. In that case the jailer was entitled to receive a fee of twenty cents for turning the key and admitting the prisoner to the jail, and he was entitled to a like fee when he turned the key to liberate the prisoner, but in that case he charged and accepted forty cents, at the time of admitting the prisoner—twenty cents for admitting him to the jail, and twenty cents for opening the door to allow him to leave the jail—and the court held that, while it could be almost conclusively presumed that it would be necessary for him to turn the key so as to permit the prisoner to leave the jail, he had no right to take the fee until he had turned the key, and for that reason in taking the fee at the time he admitted the prisoner to the jail he had taken the fee in advance—taken it before it was due—and was guilty of extortion. It will be contended by the learned counsel for the defense that we have no positive law prohibiting the taking of fees in advance, but we contend to the contrary; for it will be admitted even by the counsel for the defense that the common law did prohibit the taking of any fee in advance. The rule of decision in this state is the common law, except where changed by the constitution or the statutes of the state. In our law relating to the different county officers and some of the state officers, the statute provides that they may demand and receive their fees in advance. To this extent the common law has been changed, but in the law creating the office of insurance commissioner and providing for his fees it distinctly provided that he shall collect no fees for examination, but only his actual expenses in making examination, and that he shall make the examination and present an itemized bill before anything is due. So that it is unlawful for him to collect any expenses in advance, and this view was certainly taken of the matter by the legislature at its last session, when it passed a law making it impossible for the insurance commissioner to collect any expenses in advance. It may be said that no harm or wrong can be done anybody if the insurance commissioner *makes the examination* after he has accepted a flat fee for so doing, and there might be no wrong in the insurance commissioner pursuing this course if there was no discretion given him as to whether he should make the examination or not. In other words, if the law provided positively that he must make a certain examination, and that the company could do no business until that examination was made, then there could be no harm in accepting the fee in

advance; but when the law provides that he shall only make an examination when he deems it necessary to do so, and when making or neglecting to make the examination in no way affects the right of the company to do business in the state, you can readily see that the very minute he receives the money in advance, that minute the interest of the insurance commissioner is directly opposed to the interests of the people that he is supposed to represent. In other words, as soon as he gets the \$200, it is his interest to keep and use the same, while it is your interest and the interest of the insuring public that he spend that money in making the examination. Now, is it not safe to conclude that he would hesitate a long time to spend this money in making an examination of the company when he can keep it for his own personal use without charge or interest? And therefore we say that the iniquity of taking fees in advance is that it is in the nature of bribery and tends to prevent an examination instead of securing an examination, the examination being for the interest and protection of the people, and they can have no protection when it is to the personal interest of the officer not to make the examination.

If the insurance company had paid to Mr. Schively \$200 not to make an examination, you would say it was bribery and a crime.

Now, if paying him the \$200 *in advance* produced the same effect, why is that not a crime?

We therefore insist that it was unlawful to take this fee *in advance*, and that is the gravamen of the charge in the article of impeachment, and that when we allege that at a certain time the respondent or insurance commissioner demanded and received \$200 *in advance* without presenting an itemized statement of his expenses as provided by law, he was guilty of an impeachable offense. We say that he abused his discretion and placed himself on the side of the insurance company instead of the people; that in so doing he forfeited his right to the confidence of the people, destroyed his usefulness as an officer, betrayed his trust, and proved his unfitness to hold office, and should be removed from his high office.

We therefore urge that this demurrer should be overruled.

BY THE PRESIDING OFFICER: Do you contend, Mr. Bell, that it is not necessary to allege a crime, and that the mere taking of the expense money in advance is impeachable?

BY MR. BELL: It is our position, Mr. President, that under the law we have charged an impeachable offense by alleging that as insurance commissioner the respondent took the examination fee *in advance* and without presenting an itemized bill therefor; that when the law provides the manner in which a thing shall be done it is unlawful to do it in some other way, or at least, when it is alleged that he did it in a way not provided by law, the burden, in a proceeding of this kind, is upon him to show that he did what the law required him to do—that he made the examination and that he collected no more than was necessary to pay the expense of making the same.

BY MR. ISRAEL: *Your Honor and Members of this Honorable Court—*

I am fast coming to the conclusion that I labor under a disability to make myself understood.

I have listened with interest and profit to the long and interesting argument of Manager Meigs. I have been amazed with the amount of thought and labor that has necessarily been expended by him in its preparation. For a proper subject, it is a splendid brief. It may, and will without doubt, if these proceedings are preserved to posterity—are printed and published as your Journals are—be of wonderful help and aid to the House of managers who are to come prosecuting impeachment proceedings in the future history of our Union.

Its equal will not be found in any of the reports of any of the impeachment trials that have occurred either in the United States Senate or the various state trials heretofore had, for it is an epitome of them all. In it he has gathered the reasoning of all the great minds that voiced the sentiments and bias of the prosecution in all these great impeachment trials—and some of England's most famous.

It is a scholarly effort, and only possible in production to a mind well equipped in legal training and naturally logical. It is involved deep, and a dangerous brief to he who would oppose its reasoning—but, gentlemen, it lacks one material essential: It is without application to the question before us. It does not meet that question. It is not directed to a discussion of the simple objection I am trying to make against this article 1.

In building up that argument and fortifying its many assertions, the gentleman makes and is forced to make admissions that suffice to my purpose in still claiming that my demurrer to this article must be sustained.

From out of all the erudition displayed in that argument permit me to pluck out those admissions, and, with them in hand, for the purpose of my claim at this time, admit that all the remainder of that argument is true—still you must sustain this demurrer.

Counsel says that in the closing of my opening argument on this demurrer I said that I maintained that this is a criminal proceeding and subject to the same rules which obtain in criminal trials. Counsel did not hear me aright.

What I said, or intended to say, or was trying to say, was that this proceeding is measured by the law of criminal trials—that it is in effect a criminal trial by a court of limited jurisdiction.

Counsel quotes me as saying in the closing of the argument that the offense charged in the article is barred by the statute of limitations. Well, counsel in his argument against that position is forced to admit that courts of impeachment will not deal with stale charges—will not entertain charges of matters alleged to have taken place years before. What difference does it make whether we label the charge as barred by limitation statute or barred by its staleness. A charge of an offense occurring at a date alleged to be without the statute of limitations is certainly a stale charge. I fail to note the distinction, so I will accept the amendment of phraseology and say the charge is stale.

But let the question of statute of limitations go; let the question of jurisdiction of the court go; let the character of the court go; for the purpose of getting down to the simple test that nullifies this article, let everything I have said go, save and except my one objection that everything contained in this article considered as true fails to charge against John H. Schively anything for which you have a right to try him. If I am right in that contention, then you must sustain my demurrer.

Counsel concedes that I have a right to demur. Your rules recognize my right to demur.

Now, to get right down to an understanding of this matter—to divorce it of all legal expression or legal terms—so that he of you who never looked inside of a law book or heard of a law trial of any kind, if any such there be among you, to make all plain to you of this body who are *not* lawyers: *First*, what is a demurrer? A demurrer in law is an assertion that facts stated as constituting an offense when all admitted to be true do not constitute a crime. For example, I file a complaint against one of you in a court saying: "Senator Potts is guilty of larceny, because yesterday in the Senate chamber I left my pen knife on a desk; it was taken away, and Senator Potts was in the Senate chamber at the time." Senator Potts is arrested and called upon to plead to that complaint either guilty or not guilty of the larceny I have so charged in that complaint. Senator Potts does not enter a plea of either guilty or not guilty, though I have half a dozen witnesses present who are willing to testify that they saw Senator Potts take my knife yesterday, in the Senate chamber, off the desk where I placed it. No! Senator Potts files a demurrer to my complaint. He says by his demurrer that my complaint does not state facts sufficient to constitute a cause of action, and the court sustains his demurrer and discharges the senator. Why?—because my complaint, when everything contained in it is admitted to be true, still fails to charge the senator with any offense. I have said in it that I lost my knife in the Senate chamber, and Senator Potts by his demurrer admits that fact. I have said in it that I laid the knife down on a desk and Senator Potts by his demurrer admits that fact. I have said in it that Senator Potts was there at the time in the Senate chamber and the senator by his demurrer admits that fact, and has thus admitted everything I have charged against him. But yet he goes free—not because I have many witnesses who saw him take my knife, *but because I failed in my complaint to charge that he took it*. Until my complaint does charge that the senator took my knife, it does not charge any offense against him, and he is entitled to his discharge on his demurrer until such time as I do file a complaint so charging him. Then and not until then have I made a complaint that states facts sufficient to constitute a crime against the senator, sufficient to force him to stand trial on my charge, no matter how many witnesses I may have against him. This, gentleman, may illustrate the office of a demurrer to you.

We have demurred here to this article 1. We say to you, admitting everything stated in it, it does not state facts sufficient to constitute an offense or crime.

Now, let's analyze that article; but before we do so let us take some of the counsel's admission to justify us in submitting a demurrer to this article.

Quoting from the Federalist, he says:

The nature of the proceedings (impeachment) cannot be tied down to strict rules, either in delineating the offense by prosecution or construction by the judges.

This, I take it, is an admission by counsel that there must be some rule governing the declaration of the offense—that some offense must in some way be stated. Again, counsel quotes from Cushing's Law and Practice of Legislative Assemblies:

The articles thus exhibited need not and do not in fact pursue the strict form and particularity of an indictment. They are sometimes quite general in the form of the allegation, but always contain, or ought to contain, so much certainty as to enable the party to put himself upon the proper defense, and also in case of acquittal to avail himself of it as a bar to another impeachment.

Very well. Now we will put behind us all that I said in my opening argument—but behind us every contention as to the character of this court, whether it is criminal, civil or political in its nature—waive all claim of the statute of limitations, waive every ground urged in this demurrer except that it fails to state facts constituting an offense, and then test this article as to that claim and ground of demurrer under the law of legislative assemblies as laid down by Cushing, and, with counsel's admission of necessity of some sort of a charge being necessary, analyze this article.

This article charges that for eight years prior to January 13, 1909, J. H. Schively was the duly appointed and acting deputy insurance commissioner of the State of Washington. We admit that.

This article charges that F. J. Martin on about April 1st, 1905 (within the eight years) desired to enter five insurance companies in that state; that Schively represented to him that the usual custom was to charge an advance examination fee of \$300 each for the admission of companies, but, as Martin desired to enter several companies, the advance examination fee charge would be \$200 each; that Martin, acting upon such representations, did enter and did pay for companies as follows:

Indiana Millers' Fire Insurance Company, \$235.00.

Central Manufacturers' Mutual Insurance Company, of Van Wert, \$235.00.

The American Guarantee Fund Mutual Fire Insurance Company, \$235.00.

Texas National Fire Insurance Company, \$235.00.

Lumbermen's Mutual Insurance Company, \$235.00.

Well, we admit all that.



The article charges that in none of the instances mentioned did the state receive more than \$35 from each of these companies as the statutory entrance fee for the admission of insurance companies to do business in this state.

Well, we admit all that, too. The state had a full and legal right to \$35 from each company as a license fee to be paid when the company came into the state.

Now, this article concludes with the declaration that these facts constituted high crimes and misdemeanors and malfeasance in office and extortion, unjust, arbitrary and oppressive conduct.

The demurrer says, No! The demurrer says, When, where or how? Wherein does the article charge "that he took the knife."

Schively had a right to charge and collect an examination fee when he examined a company, and the amount of it was only governed by the amount of his necessary traveling and actual expenses in making the examination. The law says he may so charge. Does this article say that he did not examine these companies? Does this article say that the actual cost of the examination of each of these companies did not amount to \$200 in each or any instance? Wherein is it charged in the article that he did a thing he did not have a legal right to do? Wherein is charged any fact which if true would make Schively guilty of a wrong? Where is the allegation "that he took the knife"?

Suppose you permitted proof to be made before you of everything in that article, what would John Schively be then proven guilty of if you stopped the proof then and went no further? Nothing. How could you go further with the proof, if there was no allegation in this article of the things that further proof would show?

Don't you see that you must allege a thing against a man before you are allowed to prove that fact against him in any court? Don't you realize that the prosecution in this case concedes it to be true, but claims the facts in this article are sufficient in allegation?

When you do realize it, then point me out any allegation in that article to the effect that Schively charged too much for an examination or else did not make it? Still you must find one of these two facts from the evidence under the article before you can convict him.

Counsel's citation from Cushing requires such certainty as to enable the party to put himself upon a proper defense.

What is charged here that is an offense of any kind to defend against?

Gentlemen, you are driven to the path that to overrule this demurrer you must say that no articles of impeachment are necessary in this case; that the case is without law to guide your trial of it; that your rule declaring that demurrer may be interposed is a mocking delusion and a snare. For if you can say that this article charges—alleges, states the facts, claims—any crime or offense against Schively then you can say all articles are unnecessary.

I dare every lawyer in this body to vote against this demurrer. I

expect every layman in this body to vote to sustain it. It may be subsequently amended so as to charge an offense. I admit that it can be so amended, but as it is now you must sustain this demurrer to it.

BY THE PRESIDING OFFICER: The matter for determination at this time, you understand, is the demurrer to the first article of impeachment. The grounds of demurrer interposed by the defendant in this case were originally two, but I understand that he now abandons the ground or point upon the statute of limitations—that this charge is barred—so that the question that now comes before us for decision is this: Are the facts stated in article 1 sufficient under the constitution of this state? There has been an extended argument upon the question of what rule of construction should apply in this case, the defendant insisting that the rules of the criminal practice should apply and that the strict rule of construction should therefore determine the question of whether this was sufficient under the constitution, the other side insisting that a liberal construction of this should be given—that this is not a criminal court, and that the construction should be liberal. It is true that this is not a criminal court. It is not a civil suit. It is, as I say, in a class by itself. A court of impeachment is not a criminal court, but is analagous to a criminal court; but regardless, assuming under any rule of construction that you may adopt, whether the rule is applied to civil suits or the parliamentary rule, which I think should apply, but giving it the broadest construction possible, I wish you to consider—as it is a matter of a great deal of importance—I wish you to consider the charge. I wish those senators who are interested in this would turn to the first article of impeachment. The first two clauses to the second paragraph of article 1 are merely formal matter. The charging part begins after that with the word “to-wit” and ends with the word “wherefore.” The first is preliminary, and what follows the word “wherefore” is merely a conclusion. Now the charging part of that article 1 is contained then in the remainder of that, excluding the preamble, and the conclusion beginning with the word “wherefore.” For my part, I cannot see in the charging part of that article anything that indicates or implies sufficiently for any kind of a suit, even for a civil suit, a cause of action. There is nothing in there that says that this defendant unlawfully collected a dollar, misapplied a dollar, charged too much, or that implies in any way that he committed any offence against the State of Washington. There is nothing in there that brings him within the constitutional provision that provides that it must be for high crimes, misdemeanors or malfeasance in office, and when I say that I am not limiting the words “misdemeanors” and “high crimes” to statutory crimes, but to parliamentary crimes, giving it the broadest scope. It is not under the laws of this state an offense to collect legal fees in advance; it is not extortion. There is not any charge that he collected illegal fees under that article. There is nothing in that article which will negative that presumption of innocence which is accorded to every man in every court under Anglo-Saxon jurisprudence. I therefore hold

that the demurrer to the first article should be sustained. Now a question is in order.

BY SENATOR COTTERILL: Do I understand, in the opinion of the presiding officer, that paragraph 2 of article 1, ending with the word "to-wit," and the closing paragraph, beginning with the word "wherefore," should not be read in connection with that which is included between them and into them.

BY THE PRESIDING OFFICER: I wish to be thoroughly understood. The first is a definition of a crime. They allege that he was guilty of a certain crime, and they proceed then to state, following the word "to-wit," those facts which should be essential to constitute a crime, a misdemeanor, or malfeasance in office. Giving those terms the broadest interpretation—not confining them to statutory crimes and misdemeanors, because these crimes and misdemeanors referred to in the constitution relate to parliamentary construction—the allegation they charge in certain language is not an allegation of a fact, neither is the conclusion which we draw to be considered as any part of the charge. The pleading—that which is merely a conclusion of the pleader—the facts themselves, do not relieve sufficiently so that evidence could be introduced—admitting them to be true—evidence that could possibly prove guilt. It would not be admissible under this to introduce evidence that could possibly sustain the implication that is contained in the conclusion drawn by the pleader.

BY SENATOR ALLEN: I would like to ask a question. If in the third paragraph of article 1, which states that the charge of two hundred and thirty-five dollars was made, had added to it a statement to the effect that the collection of such fee was made and no examination having been made, or that the two hundred dollars so collected was in excess of the amount actually expended in making such examination, would the decision of the chair be the same as it is now, or would you hold that that would constitute a cause of action?

BY THE PRESIDING OFFICER: I am entirely willing to construe this with the utmost liberality, and if it did appear—if it could be implied—that this money was misapplied, overcharged, extorted or demanded, or embezzled, then it would make a criminal charge of that; but the mere fact that he collected a fee which he was entitled to collect, so far as it appears, does not disclose in my mind any high crime, misdemeanor or malfeasance in office.

BY SENATOR ALLEN: What I want to know, Mr. President, is, if this article had added to it a statement to the effect that the collection of such fee was made and no examination had been made, or that the two hundred dollars so collected was in excess of the amount actually expended, would it constitute sufficient ground to deny the demurrer of the respondent?

BY THE PRESIDING OFFICER: Is there any question about its being improperly copied, or something of that kind?

BY SENATOR ALLEN: I don't think so; I would like a ruling, if those things were added, whether that would constitute grounds for demurrer.

BY THE PRESIDING OFFICER: The chair will not at this time state what might be sufficient. That might come up on a motion to amend, if entertained by the chair.

BY SENATOR COTTERILL: It seems to me that this is becoming something in the nature of a debate, and I personally believe that we should debate this, and I move, under the rule, that the doors be closed before the vote be taken, and that we discuss this matter.

BY SENATOR RUTH: I move to amend by saying that it is not meant to clear the galleries or the floor of the Senate, but simply to adopt this rule in order that we may discuss this question.

BY THE PRESIDING OFFICER: It simply refers to the retirement of the defendant and his counsel and the managers and their counsel from the floor of the Senate.

BY THE PRESIDING OFFICER: Shall the decision of the chair sustaining the demurrer to article 1 be sustained, or, in other words, shall the demurrer be sustained?

Voting aye: Senators Bassett, Booth, Bryan, Cameron, Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGowan, Minkler, Piper, Potts, Presby, Roberts, Rosenhaupt, Smith, Smithson, Whitney, Williams, Mr. President—21.

Voting nay: Senators Allen, Anderson, Arrasmith, Blair, Brown, Cotterill, Cox, Davis, Fatland, Fishback, McGregor, Metcalf, Myers, Paulhamus, Polson, Rydstrom, Stevenson, Stewart—18.

Absent or not voting: Senators Falconer, Graves, Nichols—3.

At 4:10 p. m., the court of impeachment took a recess until 9:30 tomorrow morning.

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SENATE CHAMBER,  
OLYMPIA, WASH., August 14, 1909.

The Senate resolved itself into a court of impeachment at 9:30 a. m.

BY THE PRESIDENT: Senator Rosenhaupt will please take the chair.

BY MR. ISRAEL: *Your Honor and Gentlemen of this Honorable Court.*—Preliminary to proceeding, permit me to say that while I yield cheerfully to the decisions of this court as made up to this time, as to its personnel, and as to the facts or the results of the arguments urged as to the character of the court, still, at this stage of this proceeding, which is one as critical to this respondent as any other subsequent condition may be, we are engaged in the work that falls to the judge upon the bench in an ordinary trial of applying and settling the law to the various articles purporting to be allegations of impeachment against this respondent. This court, whether we deem it wholly a political court, or a political inquest, or a criminal court, or a civil court, or a court of limited jurisdiction—whatever we may deem the

body without naming it a court—is a judicial body, and is judicially determining for or against this respondent on trial—his contentions as to the law. Now, I know that upon the roll call of the Senate upon the last motion that was voted upon by you honorable gentlemen, sitting as senators, the full individual strength of this court is one-third nearly less than its normal constitutional strength. Eleven members of this court are absent this morning. Now, you know everything it does is right, because the law says everything a court does is right, which is one of the necessities of civilization, that you are right. You rightfully refused to excuse Senator Booth; you rightfully refused to unseat certain other senators; you rightfully held that all must proceed in this trial. Now, gentlemen, what is sauce for the goose is sauce for the gander. Now, is it right for the law—not the written law, because law is right and right is law (these are synonymous)—is it right that this respondent should hazard the judgment of the court this morning upon his second attack as to the law in these articles and be compelled to be told what the law is for or against him with one-third of your members absent? Gentlemen, it don't look to me like it is a square deal. Of course, you have it in your power to compel me to proceed with the argument. The next proposition that will come up will have an entirely different aspect in the grouping of these matters. New propositions will arise, different questions of law than you have passed upon, legal reasons as to why the articles are not sufficient. Now, you have ruled that it is the duty of every senator to proceed in this trial. Is it fair to the defendant when he is asking for your decision that he shall be compelled to submit to the decision of the court in which there are eleven silent voices? It is not a condition where an absent vote is a vote for the defendant at all, necessarily, because there are enough gentlemen here to form a quorum, because there are enough gentlemen here to make a majority vote, irrespective of whether this would be a majority of the entire Senate or not. So I say to you, gentlemen, that I simply object, and seriously protest against being compelled to continue my attack upon these articles with eleven members of this body absent, who must, under your ruling, sit to try this man. I do not think I ought to be compelled to do it irrespective of any question—irrespective of what any member may feel in his own heart, that he is sitting to try a guilty man, because it is simply ridiculous for us to try to hide that; but that idea must be eliminated until the process of summing up, irrespective of the idea of the ultimate result. Is it fair for you to compel me to go on this morning with one-third of your members absent—take their votes away from them without taking them away from me? I think I should be upheld in my position. I don't think you should force me like this. I do not think it is right. I do not believe you should force me to go into these arguments this morning on this question with eleven members of what the law says should constitute this court absent, and deprive the defendant of the operation of their votes.

BY THE PRESIDING OFFICER: Do I understand you make that as a motion?

BY MR. ISRAEL: I make it as an objection to your honor and this court, because eleven members of this court are not present. As legally constituted by law, the court is not here.

BY MR. MANAGER EDGE: While there may be some merit in the contention as to the necessity of having a full court here, we are all against this proposition. We started out with a couple of senators shy. If this is going to be a sufficient excuse for a recess at any time any other senators are absent, then we are going to be delayed every day during the progress of this trial. It is unfortunate that some of the senators are not here, but that is not going to say that it is going to handicap the respondent any more than the state. We have a quorum here. Under the rules and the law the Senate is entitled to proceed when a quorum is present. So far as I know, that proceeding obtains in impeachment trials the same as general legislative sessions. I think it would be well hereafter to have the senators understand that, unless in case of very urgent necessity, they are required to be here, and that ordinary matters of business be not permitted to take them from this court. But they are not here; that is the condition, and I do not feel we will be justified in suspending for a day, or until such time as they should be on deck, simply because some few are absent. There are ten or fifteen witnesses waiting attendance upon this court, and every day means an added expense and that much inconvenience, and I think by all means we should proceed.

BY MR. ISRAEL: The fact that two senators are necessarily absent, one through illness and one through misfortunes close to himself, was recognized when this court was convened, and it would have been idle and technical beyond endurance for the respondent to have claimed those members' presence before he was tried, and you should not have countenanced any such request. It would be extremely technical if one, two or even three senators were absent this morning through illness, indisposition, or urgent business, for the respondent to stand here and claim that his rights were prejudiced in compelling him to go on with this matter. That is not the situation. A third of the Senate is absent, and I claim that the respondent has the right to have the voice of every senator who can be present as to his contentions as to the law. We are not discussing ordinary interlocutory matters. We are discussing the very essence of these articles as tested by the law, and we are certainly entitled to the vote of every senator who can be present when the case comes to a test as to what the construction of the court is as to the law, and I do not think it can be justified upon the ground of fairness. The honorable member of the board of managers intimates that there is some merit to the contention. I simply say that you are not treating me right if you compel me to go ahead now from a standpoint of fairness; you are not treating me right. This is not a matter of chance or speculation. You have no right to know or conclude how any one of those eleven gentlemen would vote upon this question of law of these

articles of impeachment as it now stands—that is next to be discussed—or what the result of their vote would be to this respondent or the State of Washington. I do not believe there is a man in the Senate here that don't intend to be fair with me, or they would have walked out after my challenge. The very thing that held them here was that they believed that they could be absolutely fair, and this, gentlemen, I put up to you squarely as a matter of fairness. Should not I have those votes? I protest and I object, and I have the right to protest and object, because the situation is not of my making, and I am not quibbling on the ground that two of the senators are away from the Senate; but some of these other gentlemen say that their business at home is above their business here, and so announced themselves and took the train and went away. Give me a chance in this trial to a full vote of this Senate when it comes to a time for a vote on the correctness or incorrectness of my position. Don't handicap me by taking away eleven votes of this court on this question.

BY THE PRESIDING OFFICER: In a matter of this kind the rules provide that a decision may be rendered by the chair or a vote of this body. I do not know whether it is the wish of this body to rule upon the objection made by counsel for respondent or to have a ruling of the chair. While counsel for respondent has not shown that he may protest in any respect by the absence of eleven senators, yet upon the statement of counsel for the managers that it is not the best condition that could exist, and upon the objection of counsel for respondent, it does seem to the chair that the absence of almost one-third of the entire members of this body, upon a question of law which he is about to bring forth, may in some manner materially change the vote if the decision should come to a vote of this body. I would sustain the objection of the respondent.

BY SENATOR BRYAN: Do I understand that to be the final decision of the chair?

BY THE PRESIDING OFFICER: To the senator from Kitsap I would say that the decision may be submitted to the Senate at any time upon the demand of one-fifth of the senators.

BY SENATOR ALLEN: There is not a senator upon this floor who wants to expedite this impeachment trial any more than I do. I maintained on the first day of this trial I would ask for evening sessions in order that the work might be expedited. It was shown by counsel for both sides that that was impracticable—that the physical strain on the attorneys throughout the trial, if day and night sessions were held, would be too severe. I therefore did not press that point. I believe we should be fair in everything, and I believe that counsel for the respondent is well within his rights when he objects to going on with this trial with eleven members of this body absent. I believe that the forty members of this Senate who are not detained either by sickness or some matter for which they have no excuse should be here, and on Monday I shall move a call of the Senate, and every day during

the week, that we may go on with this trial with a full body, with the exception of those two who have been excused.

BY MR. MANAGER MEIGS: It seems to me, gentlemen of the Senate, we are making a big mistake in considering an adjournment of this court at this time. The rules provide that this court shall sit in continuous session every day save Sunday. Now, every senator here is cognizant of this rule. The rule works both ways. It is fair to the respondent and it is fair to the managers. As you know, the pleadings in this case are at this time wholly unsettled. You decided yesterday, you determined certain questions in connection with article 1, and I think the Senate should go ahead with the consideration of these matters this morning; and I venture to say that before evening every one of these preliminary questions can be settled and put aside, and next week we will begin this case upon its merits, and on behalf of the managers I want to say that we seriously oppose any attempt to postpone the hearing or determination of these articles at this time. There are some questions that should be threshed out today that will have a bearing upon the other question with regard to these articles. It has been decided that article 1 is deficient, and it was practically understood that the House was to prefer an amended article. Now, with regard to some twenty-one or twenty-two or three of these articles, there is absolutely no use of the House preferring amended articles if the question of deputyship is to be considered by this court. I presume, under sub-division A, article 6 of respondent's answer, the question will be presented whether or not this respondent is responsible for acts done by him in the capacity of deputy. Now, if that question is to be raised, it makes no difference whether it is raised under the articles in their present form or under amended articles. If we go ahead and prepare amended articles and submit them to the Senate without that question being decided, we will have incurred a great deal of expense, because a number of witnesses are here on behalf of the state, and will have to go to a great deal of trouble and expense and needless inquiry, and the time will be needlessly spent if by a decision of the Senate they should hold that his acts as deputy are not chargeable against him at that time. That is one of the questions to be considered by the Senate, and we submit that it should be considered at this time in order that the state may not be put to the necessity of taking care of a great number of witnesses who, if the Senate should decide in favor of the respondent, will not be used in this trial.

BY SENATOR BRYAN: I believe that this is a very important matter, and I do not believe that this Senate ought to establish a precedent here that will enable any five or six members of this Senate to absent themselves from this Senate. Now, it was well known that we would have this hearing today and that we would proceed with this court. The supreme court often times sits with only the majority of the court present, and I see no reason why we should not proceed with the trial. This is a regular session of this Senate. As far as the proposition has



been submitted to us, the respondent was perfectly satisfied to try this case with sixteen of us absent. He was perfectly satisfied with that, and out of these eleven that are absent today I notice three of them were not here at all and another is Senator Booth, and that makes four of them; and there are two of the absentees that are excused regularly by the Senate, and I do believe we ought to make this rule today, and that we ought to go on regularly with the procedure and the work set out before us, and not falter at this time. We had it definitely understood when one of these senators, who is absent today, took the position yesterday and moved to amend and prevent our holding a session until 3:30 this afternoon and adjourn until Monday, this House determined not to do it, and I think we should proceed.

BY SENATOR RUTH: Mr. President, I arise to a point of order. The chair has ruled, and the rules provide the means.

BY SENATOR COTTERILL: I desire to make this suggestion: Can we not proceed and listen to the arguments upon the point referred to with the distinct understanding that there shall be no vote until Monday—that those who are absent may have an opportunity to read the transcribed report of the argument. I think that suggestion is good.

BY THE PRESIDING OFFICER: I am perfectly satisfied that the chair have no part in the ruling, except so far as his opinion goes, and if this Senate wishes to go ahead, I am perfectly satisfied that it do so.

BY SENATOR PRESBY: I make this suggestion: It is certainly very fair for the attorney for the defendant to make this motion, and I can't understand why it is resisted by this Senate for this reason: When it comes to a vote, should it ever come to a vote upon the question of guilty or not guilty, twenty-eight men must hold that not only under the facts, but under the law, the defendant is guilty, in order to impeach. There are twenty-nine men here; every one of them but one that must be advised on the law and agree; those that are absent, how are they going to form an opinion on the law to satisfy them? They are entitled to the argument of counsel here.

BY SENATOR EASTHAM: I arise to a point of order.

BY SENATOR BRYAN: Well, I think there will be enough join me to have this matter submitted, so that we can appeal from the ruling.

BY SENATOR PIPER: I think that I should state here that there will be no time but what a great many of the senators will be absent, and I think we ought to go ahead. Every time there is a member absent the same excuse will be offered, and in my opinion I think we ought to stay with it.

BY SENATOR BRYAN: I appeal and ask that the matter go for decision.

[Whereupon Senators Bryan, Polson, Fishback, Blair, Brown, and Anderson arose on the appeal.]

BY MR. MANAGER EDGE: In my study of impeachment trials, I find that the president was often compelled to send the sergeant-at-arms after enough members to even have a quorum.

BY SENATOR RUTH: I move that the doors be closed and that we proceed to debate this matter with the understanding that no one shall be compelled to leave the room in this case.

BY SENATOR FALCONER: It seems to me that it is up to us to vote on this question at this time. I think the chairman should call for a vote and a decision. I see no need of debating this question further.

BY SENATOR RUTH: I am perfectly willing, if that is the disposition of the Senate.

BY THE PRESIDING OFFICER: The question occurs on the appeal taken by Senator Bryan, of Kitsap. The question before this body is, Shall the decision of the chair stand as the judgment of this court?

Voting aye: Senators Allen, Arrasmith, Bassett, Cotterill, Davis, Fishback, Hutchinson, Kline, Knickerbocker, Metcalf, Minkler, Presby, Roberts, Rydstrom, Smithson, Stewart, Whitney, Mr. President—18.

Voting nay: Senators Anderson, Blair, Brown, Bryan, Eastham, Falconer, Fatland, McGowan, Myers, Piper, Polson, Stevenson—12.

Absent or not voting: Senators Booth, Cameron, Cox, Graves, Huxtable, McGregor, Nichols, Paulhamus, Potts, Rosenhaupt, Smith, Williams—12.

BY THE PRESIDING OFFICER: The vote of the Senate sustains the decision of the chair, there being 18 yeas and 12 nays.

At 10:55 a. m., the Senate, sitting as a court of impeachment, adjourned to 9:30 a. m., Monday, August 16.

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SENATE CHAMBER,  
OLYMPIA, WASH., August 16, 1909.

The Senate, sitting as a court of impeachment, convened at 9:30 a. m.

BY THE PRESIDENT: Will Senator Rosenhaupt take the chair.

BY THE PRESIDING OFFICER: I believe when we adjourned on Saturday it was the endeavor of counsel to agree as to what should or should not be considered at this time.

BY MR. ISRAEL: There has been no conference between myself and counsel beyond such as agreed at the time of the last adjournment, at which time I indicated to counsel that in all probability I should withdraw the demurrer to certain of the articles.

But the same condition, if the court please, confronts us here this morning that confronted us Saturday morning. I don't want to be captious, your honor. I don't want to put myself in the light of seeking to be captious or technical. I want, if I can, to be as broad and liberal as possible in the trial of this case; but I still adhere to the position that I took before this honorable court on last Saturday. I might ask simply to submit the second group of articles, which are 10 and 13. Regarding articles 10 and 13, it seems to me they pass out of

the record by force of the decision made as to article 1. But there occur other objections than those already offered to the remaining articles, and possibly these objections may lead into an argument entirely different from that intervened before. I say possibly, because I don't conceive that the second group, the third group, or the fourth group need any criticism beyond the criticism made to the first. But thereafter the demurrer is directed to an entirely different state of affairs. Now, I don't think it is fair to tell me to hazard these matters—these questions of law—on the vote of the court when only a portion of the court is present. I do not desire to go over the ground that I went over Saturday. I take it that the court is consistent. If it was right then, it is right now. Undoubtedly it was right then. I regret that any delay should occur, but it seems to me these gentlemen must be here on the eleven-o'clock train, and it suggests itself to my mind here, although I realize that I have naught to do with that feature of the matter, that possibly this honorable body as a Senate could engage themselves until the train comes in and give me the benefit of those members who are on that train, in the court of impeachment. I hope you can make some arrangement so as not to force me to go into this discussion with all of these gentlemen absent. Of course, I am in your hands.

BY SENATOR COTTERILL: I desire to ask the secretary how many are absent.

BY THE SECRETARY: Eleven are absent.

BY THE PRESIDING OFFICER: I might make this suggestion to counsel, that on Saturday at the time this court adjourned there was evident prospect for losing one or two additional members. There is every prospect for the remaining members to be in shortly, and I don't believe there would be anything lost by counsel going ahead at this time.

BY MR. ISRAEL: May I ask your honor if there is any assurance that these members are in the city?

BY THE PRESIDING OFFICER: Undoubtedly the gentlemen who are out of the city will be here on this train.

BY SENATOR COTTERILL: At least six of the eleven who were absent Saturday are now here, and, while not desiring to question our secretary, I think they are present now or have responded to the roll call, at least two or three more than thirty-one.

BY THE SECRETARY: Those absent are Cox, Davis, Fatland, Graves, Hutchinson, McGowan, Rydstrom, Smithson, Stewart, Roberts—eleven in all.

BY SENATOR COTTERILL: At least four, if not five of those gentlemen, are here, known to be in the city.

BY SENATOR ALLEN: I move for a call of the Senate.

BY THE PRESIDING OFFICER: I believe, before there could be a call, the Senate, sitting as a court, will have to resolve itself into a Senate.

BY SENATOR FALCONER: I think it is up to us to proceed with the trial.

BY SENATOR ALLEN: Due notice was served on everybody that this Senate would be called at 9:30 this morning, and the members knew that we would not go ahead with thirty-one members in their seats, and it is up to us to get those senators here.

BY THE PRESIDING OFFICER: If there is no objection, the chair will call a recess for fifteen minutes and order a call of the Senate in the meantime.

BY SENATOR FALCONER: I wish to raise an objection to that question. The court will resolve itself into the Senate of the State of Washington by call of the Senate. I think, under the rules covering this Senate, a certain number form a quorum. We have placed that number there for a specific purpose. Now, there is a quorum here, and it seems to me we are ready to go ahead and do business, and there is no reason why we should spend a half hour in getting absent members here. I hope we will not order a call of the Senate, particularly if we have to wait for these senators to come here.

BY SENATOR COTTERILL: The last statement of our friend from Snohomish does not follow the first. It is up to us to use the power in the hands of this body and have a call of the Senate at this time. Let it be understood and enforced that the members must be here. Let us make a time to be here. I suggest that we pass the motion made by Senator Allen for a call of the Senate.

BY THE PRESIDING OFFICER: There is a motion before the Senate at this time. All in favor of the motion made and seconded for the call of the Senate, make it known by the usual sign. The motion is carried.

At 10:00 o'clock a. m. the court of impeachment took a recess until 10:40 a. m.

At 10:40 a. m. the Senate, sitting as a court of impeachment, was called to order by the president.

BY THE PRESIDENT: Senator Rosenhaupt will take the chair.

BY THE PRESIDING OFFICER: I understand this court of impeachment has reconvened for the purpose of requesting the respective counsel to state what manner and method of procedure be adopted, and for the discussion of the same.

BY MR. BELL: Do I understand this body has taken a recess, waiting for other members of this Senate?

BY THE PRESIDING OFFICER: This body has now reconvened for the purpose of according counsel an opportunity to discuss methods and the manner of procedure, which will possibly not require a full attendance of the Senate.

BY MR. BELL: *Mr. President and Gentlemen of the Senate*—There is one matter that the managers have been talking about as to procedure, and which we suggested to the opposite counsel concerning that matter while we were withdrawn from the presence of your body. That was as to the character of the officer who is tried in this matter. It will be raised and will come up all through this trial: whether Mr.

Schively as deputy insurance commissioner can be impeached. Also another question: whether an officer can be impeached for acts done prior to the commencement of his term of office—to the office for which he was elected. Mr. Israel, as I understand, takes the position that it is purely a question of law, that should be fought out at the time of introducing the testimony, or be determined upon the merits of the case at the close of the taking of the testimony. We allege that Mr. Schively was a deputy insurance commissioner from 1901 to 1909; that then he was elected insurance commissioner and since that time these impeachment articles have been filed. Now, it is admitted that he was a deputy insurance commissioner during each of those times, and that he has been elected since that time. So there is no proof to be taken on that point. In his affirmative answer he sets up the point that he was a deputy insurance commissioner and was simply an employee in the office, and that he, therefore, was not responsible for what was going on in the office; that he was carrying out the program of the office or the details under the policy of the office; that he was only an employee in the office and, therefore, could not be impeached. Now, it seems to me, and to the managers, if that question can be raised at the present time, before we introduce any testimony, it will eliminate a great deal of argument and strife as to what matters will be admissible as testimony. For instance, at this time, if the Senate decides that Mr. Schively cannot be impeached for the offense charged prior to his term of office, it simply eliminates everything that we have alleged was done prior to that time. If you think that he is not to be impeached for this offense because of that, that settles it. If you hold that an officer is not impeachable for an offense done prior to his term of office, or is not liable for offenses done while he was deputy insurance commissioner, that eliminates from this case half of the sixteen articles, as some of those charge him with things done while he was deputy. The demurrer states this fact, and that these facts don't charge a crime against the respondent. The question should be raised right there, that if the facts we have alleged don't charge a crime against the respondent, why? Because they occurred prior to his term of office, or that he was a deputy at the time that he committed those acts. As I say, if you are going to take that matter up—if you are going to construe it so, and decide against the contention of the managers on this proposition—it eliminates all of those questions, all of those things we have set up that have occurred, except those which have occurred since he was in office. It eliminates a great deal of testimony and will save a great deal of time.

By MR. ISRAEL: Your honor, you are a lawyer. Does your honor catch any question of procedure from the gentleman's remarks? Is it not rather anticipating what I might do before I get through? Is it not up to me to raise these questions when I see fit to raise them? It seems to me I should not be called upon to discuss that procedure. I would like your honor's ruling.

BY MR. MANAGER MEIGS: *Mr. President and Gentlemen of the Senate*—It seems to me that we are by no means ready at this time to begin the introduction of evidence in this case. Only two, or at best three, of the respondent's five grounds of demurrer have been disposed of. I ask you to turn to page 14 of the respondent's answer. You will observe that subdivision (a) of article 6 is as follows:

1. Respondent demurs to article 1 of the articles of impeachment herein because the facts stated therein do not constitute either a high crime, high misdemeanor, or malfeasance in office, or any crime, misdemeanor or malfeasance *on the part of respondent*.

This portion of the demurrer, in my opinion, raises the most serious law question which this case will present. It questions the jurisdiction of this tribunal to try the respondent upon the charges contained in the first twenty-four articles of impeachment, and, like any other jurisdictional matter, it should be determined at the very threshold of this proceeding. Why, may I ask, do the facts stated in article 1 of the articles of impeachment not constitute any crime, misdemeanor or malfeasance *on the part of this respondent*? Because, says the respondent, beginning on page 24 of his printed answer, I was a mere deputy or employee of the secretary of state, Sam Nichols, at the time of the commission of the offenses charged against me, and the things in the articles complained of "were wholly by reason of the policy and departmental rules of the said office of the secretary of state." In other words, this portion of the defendant's demurrer opens up the broad inquiry as to who may be impeached under the constitution and laws of Washington; whether one who is now a state officer within the meaning of section 2, article 5 of the constitution can be impeached for acts committed in private life and prior to his present tenure of office.

The charges contained in these first twenty-four articles of impeachment are not new. They have been going the rounds of the state for at least a year, and the only explanation of them which I have heard, either from the respondent or his friends, is that which is suggested by subdivision (a) in his demurrer to article 1. If this is a good defense in law; if it is true, and we maintain that it is not, that the respondent, who is now a state officer, cannot be impeached for offenses involving great moral turpitude but committed in private life and prior to his becoming a state officer, then it is useless to put in evidence under any of the articles other than articles 25 and 26; it will be a waste both of time and of money to give these first twenty-four articles any further consideration.

There should be no protest on the part of the respondent against having this question settled at this time, and, in view of the statement contained in paragraph 1 of article 6, page 14 of the printed answer, I am surprised at the objection raised here by counsel for respondent against a line of procedure which is his own creation. In this first paragraph he asserts that at this time, as a matter of law, the respondent "is entitled to have decided and passed upon by this honorable tribunal" the very question which he now purposes shall go over until

after all of the state's evidence has been put in. We feel that this case should proceed in an orderly and rational way, and insist, therefore, that this, as well as all other jurisdictional questions, be settled before the production of any evidence whatever.

BY THE PRESIDING OFFICER: Do I understand counsel for the managers to request a ruling upon that contention?

BY MR. BELL: It seems to me that it is a matter that might be submitted to the Senate and discussed at this time, if you want to rule upon it as a matter of procedure.

BY MR. ISRAEL: It is not a matter of law.

BY MR. BELL: It is a matter of procedure. I did not say a word about law. It is a matter of procedure, whether the Senate wanted to sit here four or five days and hear questions argued that might be eliminated.

BY SENATOR FALCONER: I move that we go ahead with the regular trial.

BY THE PRESIDING OFFICER: Do I hear a second?

BY SENATOR ALLEN: I second the motion.

BY THE PRESIDING OFFICER: It is moved and seconded that we proceed with the trial.

BY THE PRESIDING OFFICER: The chair is in doubt.

[Whereupon the question was again put, the chair calling for a rising vote.]

BY THE PRESIDING OFFICER: The motion is lost. I might say that if the court desires at this time, we might take up the suggestion offered by the board of managers that this question of procedure be discussed under rule 18. I simply suggest this for the purpose of expediting matters which may have to come up at some other time.

BY SENATOR COTTERILL: I move that as a court of impeachment we take a recess until 11:30, with the understanding that when we then convene we continue until 1 o'clock, and then take a recess until 2 o'clock.

BY SENATOR FALCONER: We have established a rule, and it seems to me we ought to stay with it.

BY SENATOR BRYAN: The point I would like to hear discussed is the motion. It was the request of counsel for respondent that this thing be continued Saturday upon the ground that there were absentees. I would like to hear that argument on the motion continued; I would like to hear the authorities on the other side. It seems that there are going to be absentees during this trial, as there is an entirely new set of absentees this morning. If we are going to allow this, we want to know it.

BY THE PRESIDING OFFICER: I think that the motion just made by Senator Falconer from Snohomish was that the court proceed with the trial, and the motion was lost.

BY SENATOR BOOTH: I move that we take a recess until 11:30.

BY SENATOR WILLIAMS: I second the motion.

BY SENATOR FALCONER: I would like to ask the mover of that

motion why we should take a recess until 11:30? The train comes in at 11:30, and it is hard for a senator after he gets off of the train to get to his hotel and arrange matters within a half an hour. There may be a reason for adjourning until one o'clock, but there is no reason for adjourning until 11:30.

BY SENATOR BRYAN: I move as a substitute that we adjourn until 1 o'clock.

BY THE PRESIDING OFFICER: It is moved and seconded that we now adjourn as a court of impeachment until 1 o'clock.

BY SENATOR FALCONER: Mr. President, I desire a roll call.

BY SENATOR COTTERILL: I understand this will be a motion that the court of impeachment will take a recess until 1 o'clock.

BY THE PRESIDING OFFICER: Yes.

BY SENATOR COTTERILL: Well, then, if that motion carries, we are to come to order as a Senate, and after that we will go on with our business as a Senate until 11:30 or 12:00.

BY THE PRESIDING OFFICER: The chair will hold that under this motion, if it is carried, we will adjourn as a court of impeachment until 1:00 o'clock.

The secretary called the roll, with the following result:

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Cotterill, Fishback, Huxtable, Knickerbocker, Metcalf, Myers, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rosenhaupt, Smith, Whitney, Williams, Mr. President—22.

Voting nay: Senators Booth, Bryan, Brown, Cameron, Eastham, Falconer, Kline, McGregor, Minkler, Stevenson—10.

Absent or not voting: Senators Cox, Davis, Fatland, Graves, Hutchinson, McGowan, Nichols, Rydstrom, Smithson, Stewart—10.

BY THE PRESIDING OFFICER: The motion that we take a recess as a court of impeachment until 1 o'clock is carried, and at this time, 10:45 a. m., the court of impeachment will take a recess until 1 o'clock, and we will now convene as a Senate.

At 1:10 p. m. the Senate convened as a court of impeachment.

BY THE PRESIDENT: Senator Rosenhaupt will take the chair.

BY SENATOR PIPER: I move the adoption of the following resolution:

*Resolved*, That the rules of procedure governing impeachment proceedings be amended by adding thereto the following:

Rule No. 22. Any member who fails to be present upon the convening of the Senate, without leave of the Senate, shall be considered to be in contempt of the Senate as a court of impeachment, and shall be fined not less than \$5.00 nor more than \$25.00.

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Falconer, Fishback, Kline, Knickerbocker, McGregor, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Rosenhaupt, Smith, Stevenson, Mr. President—27.



Voting nay: Senators Eastham, Huxtable, Roberts, Whitney, Williams—5.

Absent or not voting: Senators Cox, Davis, Fatland, Graves, Hutchinson, McGowan, Nichols, Rydstrom, Smithson, Stewart—10.

By MR. LEE: *Mr. President and Gentlemen of the Senate*—In order to expedite matters, and in behalf of the board of managers, at this time we ask leave to withdraw for the purposes of amendment articles 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, for the reason that they are almost identically the same as article 1. On account of the Senate ruling, we deem it a waste of time to argue a demurrer on those subsequent articles, and, in order to expedite matters and obviate the necessity of an extended argument on matters involving exactly the same principle, we ask leave at this time to withdraw those articles for the purpose of amendment. So that leaves for the purposes of demurrer which can be disposed of now articles 2, 3 and 4, and everything following 17, and including 17; and I think, therefore, that demurrers to those ought to be taken up at this time.

By MR. ISRAEL: So that I may understand, the journal shows that these articles 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16—I believe that is the order of them—are withdrawn from these articles of impeachment.

By MR. LEE: Not at all, Mr. President. Counsel no doubt would like to have us in that position, but we are not in that position, and that is not the position we take before this Senate. We are asking leave to withdraw the articles for purposes of amendment and for no other purpose.

By MR. ISRAEL: Have you concluded, Mr. Attorney General? I had not concluded, but I want it understood, gentlemen, so far as these articles are concerned—1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16—unless they are subsequently brought to the bar, that they are eliminated, so far as these articles are concerned at this time.

By MR. LEE: The understanding is, Mr. Israel, that they will be brought to the bar of the Senate at the proper time.

By MR. ISRAEL: Exactly; but I want it understood before we pass by now that without they are brought in in the nature of an amendment, they are out of these pleadings.

By MR. LEE: That is all right.

By MR. ISRAEL: That is what I was trying to do when you interrupted me.

By THE PRESIDING OFFICER: For the purpose of amendment, the board of managers at this time will be permitted to withdraw article 1, as well as articles 5 to 16 inclusive.

By MR. LEE: Mr. President, the board of managers have no authority to withdraw these articles; they simply ask leave of the court to ask permission of the House to withdraw these articles. Then they will present them to the Senate in amended form.

BY THE PRESIDING OFFICER: That is the ruling of the chair; that they may have that opportunity, and present them to the Senate at the proper time; the same to be amended as the House desires to have them amended.

BY MR. ISRAEL: Mr. President, to be orderly here, and proceed with a semblance of making a record for the future, as a lawyer it appeals to me, and I think it will appeal to your honor as a lawyer, that this taking permission to amend these articles is tantamount to a confession of the demurrer, and that there ought to be an order here now sustaining the demurrer to articles 1, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16, with permission to amend. Then the record is straight.

BY MR. LEE: Now, Mr. President, in that regard the board of managers have no authority to confess, but if the Senate feels that the other articles are so similar to the first article that the demurrers should be sustained to the other articles, then that is for the Senate to say, and not the board of managers.

BY MR. ISRAEL: Not necessarily for the Senate, because if they want to they may overrule the chair, but it is for your honor to rule and give them permission to amend. Then we have got them all out of the way.

BY THE PRESIDING OFFICER: I think, Mr. Israel, there is no occasion for the record to show that the articles have been passed upon. Article 1 has been duly passed upon by the chair and approved by the Senate. Those other articles have not been passed upon by the Senate; and the board of managers have asked permission to withdraw the same from the Senate, that they may ask leave to amend from the House, if they so desire, and present the amendments to the Senate. The counsel for respondent has practically agreed in my judgment that this may be done, and I think it can be done without an order by the chair, without the record showing that these demurrers were passed upon and overruled.

BY MR. ISRAEL: Let me ask you this question: Is it the intention to have the demurrer either sustained as to them or have the records show that the honorable board of managers shall not submit them in their present form without they amend them? Is that the idea? Suppose that the honorable managers should conclude they wanted to re-cast them, and not amend them. You can see my position.

BY THE PRESIDING OFFICER: Then the counsel for respondent has not lost any rights.

BY MR. ISRAEL: I know, but we have got to take up these matters as we go along.

BY THE PRESIDING OFFICER: I think the record will be clear—that is, that the managers ask permission to withdraw these articles, to take them up with the House.

BY MR. ISRAEL: Very good, your honor.

BY THE PRESIDING OFFICER: If there is any objection to that, by a sufficient number of senators rising, the ruling may be questioned.

BY MR. ISRAEL: If the chair will permit me, just a moment now

to examine this elimination. Your honor, under the circumstances of the withdrawal for amendment of these articles that have been withdrawn, together with the one to which the demurrer was sustained, I shall at this time withdraw the demurrers to the remaining articles and allow the case to proceed upon the pleading of not guilty to these articles. We are ready for trial.

BY MR. LEE: I would like to ask for about 10 or 15 minutes.

BY MR. ISRAEL: I think the gentleman ought to have it, your honor.

BY THE PRESIDING OFFICER: Yes, sir; there is no objection, as I understand. Mr. Lee, you desire 10 or 15 minutes to consider this matter.

BY MR. LEE: Oh, no, just 10 or 15 minutes to consider our proof.

BY THE PRESIDING OFFICER: Then they are withdrawn for the time being?

BY MR. ISRAEL: No, they are absolutely withdrawn to the articles of impeachment as they now stand, with those other articles eliminated, and we stand on the plea of not guilty.

BY MR. LEE: With the understanding, Mr. President, that when the articles are presented to this Senate we can vary the order of proof as we choose, and submit proof on the amended articles.

BY MR. ISRAEL: Oh, certainly; if you bring in amended articles, we will have to argue that question all over again.

BY THE PRESIDING OFFICER: If there is no objection, at this time the Senate as a court of impeachment will be at ease for 15 minutes.

BY MR. LEE: *Mr. President and Gentlemen of the Senate*—Prior to a brief opening statement as to the facts on which the House of Representatives expects to prove in this case, and inasmuch as the rule only permits of one opening address, we desire to ask the courtesy of the Senate in this particular, that just prior to proving the perjury charge, or attempting to prove it, owing to the fact that it will be somewhat protracted, we then be permitted to make a separate opening statement on that article.

BY MR. ISRAEL: I would join in counsel's request, if he thinks it is necessary, that he be allowed to make such an opening statement, and that the same courtesy be extended to the defense, if it should see fit to make such an opening statement.

BY THE PRESIDING OFFICER: There being no objection to that and the chair deeming it proper, counsel may proceed.

BY MR. ISRAEL: If the court will permit me one moment to make an interruption.

BY MR. LEE: Yes.

BY MR. ISRAEL: I think that I was clearly within defendant's rights and should not have been expected to anticipate this matter in any other way than that they proceed with the proof in this case on the articles in the order in which they occur in the impeachment; the first article, article 2, is the Lebo charge, and so on through. The perjury charge is article 25. Now, I have just issued subpoenas at this moment for my witnesses, including my Spokane witnesses, that the defendant will need in presenting his defense; and I have not

issued them up to the present time because of my statement all along that I did not think it was necessary to put the state to the necessity of subpoenaing witnesses who would not be used if certain articles of impeachment went out, as has been the case. Neither shall I put the state to the expense of paying per diem for witnesses who would not be wanted for several days. And so today I have issued my subpoenas, all of which will be returnable and the witnesses arrive here within 36 or 48 hours. But I have issued them upon the supposition that we were to proceed as in any court of any character, in the order in which the allegations are made in the articles of impeachment. So I expect the gentlemen to begin with article 2 and continue with article 3 and article 4 and then with their article twenty-odd and so on through; and the reason that I am on my feet now in making this statement is for the purpose that we have no misunderstanding at the threshold as to how we are going to proceed here with the proof.

BY THE LEE: Mr. President, the managers reserve the right, and it is their right and privilege, to submit the proof in the order that best suits them, and in reply to counsel I may say that recent developments in this case have perhaps disconcerted us in the introduction of evidence, as apparently it has disconcerted counsel, and he has had 30 days or five weeks in which to subpoena witnesses, and has had his answer in for a considerable period of time; and now he says before the bar of this Senate that he has just issued subpoenas. If that is true, and it is to cause any delay, I think he has no one to blame but himself. We intend, with the consent of the Senate, to take up the proof on article 3, followed by proof on article 4; then to take up the proof on article 19, and followed by the proof on article 20, and I presume that will consume the time of this Senate for the rest of the afternoon.

BY MR. ISRAEL: I have been in no wise disconcerted, your honor, by anything that has happened yet. I probably may be doubly confounded before I get through. I don't know, but I must plead not guilty up to this time, not being in anywise disconcerted. It was only for the purpose of answering what seemed to be in counsel's mind when he asked permission to open the perjury charge—to discover whether he was going into that perjury charge the first thing, although it was the twenty-fifth allegation in the complaint. Now, I have no objection to their taking up within the bounds of reason these articles out of their order of allegation as he indicates—3, 4, 19, and 20—but I think it proper for him to state far enough ahead as to permit us to bring our witnesses daily. I have not delayed in the getting of the witnesses for the purpose of delaying this body, and am not going to delay this body one moment. I am still in the position that I have stated—that I do not consider it good practice or fair to anybody or to the people who pay the bill for this court to have a flock of witnesses waiting about this court room who might never be used at all, and had I proceeded to issue my subpoenas before this court convened I would have a dozen witnesses here who would never be put upon the

stand without they have amended articles, and I am perfectly willing to proceed upon the order indicated.

BY THE PRESIDING OFFICER: The chair will hold that as the issues are now framed, the articles of impeachment having been filed, as well as the answer thereto, together with the reply, it is presumed that the trial may proceed upon any of the sections within the said articles of impeachment, the issues being made up on all of them, and I don't believe it would be in the province of the chair to direct with which of the articles the board of managers should first proceed. I think it is in their discretion to proceed with the trial of them as they see fit and proper.

BY MR. LEE: *Mr. President and Gentlemen of the Senate*—Perhaps it might make your minds a little more receptive if before the introduction of any evidence in this case there is presented to you a brief opening statement of what we expect to prove, and what we expect you to find upon that proof and the law in this case. Therefore, on behalf of the board of managers, I am privileged to make this opening address to you, and I assure you at this time it will be very brief.

For the first time in the history of this state the Senate of the State of Washington is convened as an impeachment court. Seldom indeed in the history of any commonwealth is the Senate of a state convened for that purpose, and I trust that never again in the history of this state may it occur again. The purpose of an impeachment trial has been demonstrated to you by the board of managers here, and I shall not attempt to enter into that discussion again. It is primarily to determine whether or not a public officer has been guilty of high crimes and misdemeanors and official malfeasance in office—to determine whether he is unworthy to hold the position that he occupies. And I trust that this Senate at the outset of this trial will disabuse its mind of the impression, if it does exist, that you are sitting as a criminal court to try a man upon a criminal charge. If you so conclude, you do violence to every rule of parliamentary procedure; you do violence to every impeachment trial that has ever occurred in this country.

Under our system of government, democratic in its nature and in its operation, men are elevated to public office presumably because of their fitness, their competency and their moral qualifications. And I may say that when a public man is elevated by the suffrage of his fellow men to a superior office in the state and he commits the crime of extortion—and I am not asking you at this time to say that he has done it yet—but if he commits the crime of extortion, I submit to you that it is one of the most reprehensible crimes, if not the most reprehensible, outside of treason, which a public officer can commit. When he assumes a superior office, he lays down the rules and regulations, interprets and construes the statutes of the state governing his department, and has a great number of people at his mercy, and under his control.

Now, the constitution of the State of Washington, as has been

expounded to you by this board of managers, is to this effect: "That the governor and other state and judicial officers may be impeached for high crimes and misdemeanors, and malfeasance in office." Now it will arise later in the introduction of evidence, and I may as well suggest it here and challenge your attention to it, so that you may give it proper consideration: the constitution does not say that a man shall be impeached for high crimes and misdemeanors in public office, but it says that he shall be impeached for high crimes and misdemeanors, and malfeasance in office. We contend that the respondent, Mr. Schively, for eight years deputy insurance commissioner, and at present insurance commissioner of this state, was guilty not only of one but of both of the offenses specified in the constitution. In other words, we contend that he was guilty of high crimes and misdemeanors, and we shall show you that extortion is certainly a high crime and misdemeanor; and we shall show also, in addition to that, that he has prostituted his high office, and has, therefore, been guilty of malfeasance in office.

Malfeasance in office or a high crime or misdemeanor does not necessarily mean an indictable offense, does not necessarily mean a criminal offense—all the more aggravated if it is, but it does not necessarily mean that. It means, has the officer from a course of conduct shown himself unworthy and corrupt, so that he ought not longer to enjoy the confidence of his fellow men and ought to be deposed from the office for which he was elected? We shall show you by the evidence that he was not only guilty of moral turpitude, that he was not only guilty of malfeasance in office, but he was guilty of extortion, and we contend that extortion is a high crime and misdemeanor. We contend furthermore that his commission of the offense of perjury while he was insurance commissioner of this state and when he was in attendance upon the grand jury at Spokane is an additional reason which brands him as an officer unworthy of the public confidence and esteem. Perchance this arraignment may seem to be too severe, but I want the gentlemen of the Senate to bear it in mind, and when the evidence is in I will ask you then if I have exaggerated the facts.

Now, before we proceed to the facts relating to the articles which are before us for consideration, allow me to call your attention to the statutes of this state, with which you are no doubt familiar, but on which at this time I desire to refresh your memory. Under the old law, which was passed when Mr. Schively was deputy insurance commissioner, there was no such thing as insurance commissioner of the State of Washington. There was the secretary of state, who had the duties of his office to discharge, and, in addition to that, he was by statute made the *ex-officio* insurance commissioner of the state. At that time he was by law given a deputy insurance commissioner—not an employee, not a clerk, not a mere ministerial man, if you please, as counsel for respondent would have you believe in his answer, but he was by law designated and denominated as the deputy insurance com-

missioner of the State of Washington. He was invested with the same rights and privileges that his superior officer had. He had the right to issue licenses; he had the right to receive advance entrance fees; he had the right to revoke licenses; he had the right to make examinations. In other words, as Meacham on Public Officers lays down the distinction, he was in all particulars and essentially a public officer himself. And I suggest that to you for your consideration at this time, so that you may further disabuse your mind of the impression that may perchance exist that this man was operating exclusively and entirely under the direction of another. I say that if he was he must have found his authority from other and different sources than the statute, because the statute invested him with the same powers, rights and privileges that the then secretary of state had.

I direct your attention to section 5648 of Pierce's Code, which escaped my attention and was misplaced, and which reads as follows:

*Deputy Commissioner. Salary.*—The commissioner shall appoint a deputy, whose salary is hereby fixed at \$1,500.00 per annum, and in the absence of the commissioner or his inability for any cause to exercise the powers and discharge the duties of his office, the powers and duties of the office shall devolve upon the deputy.

Without discussing the law at this time, I submit to you as an elementary proposition, and counsel, if fair, will admit it, that he is a public official; that his duties are prescribed by statute; that his appointment is prescribed by statute, and his compensation fixed by statute. If so, then the authorities hold, and rightly hold, that, inasmuch as he is invested with the powers, privileges and duties of a superior officer, then to all intents and purposes he is a public officer. If you will analyze this for a moment, you can see the reason for it. If an assistant attorney general, assistant land commissioner or any other assistant can say, "I can do anything that I desire, but I am not amenable because I am not a public official," gentlemen, I submit to you, it would be an absurdity.

The section to which I have referred is followed by other sections, that the insurance commissioner or his deputy has a right to collect certain fees. Section 5636 of Pierce's Code reads as follows:

The commissioner shall require in advance the following fees: *First*, for filing articles of incorporation or certified copies of articles, by-laws or other certificates required to be filed in his office, \$25.00; issuing certificate of authority, \$10.00; for each renewal certificate of authority, \$10.00; for filing the annual statement of condition, \$10.00; for filing each annual statement of business transactions in this state, \$10.00; for filing any other papers, \$1.00; for furnishing copies of papers filed in his office, 20 cents per folio; for certifying copies, \$1.00 each; for each agent's license, \$2.00: *Provided*, That all fees so collected shall be paid into the state treasury.

Mr. Schively was deputy insurance commissioner, and for eight years he was acting under the statute of the state which I have read you. He knew he had a right to collect these fees, and had a right to do so under color of his office. He is presumed to know the law, and

if a public official doesn't know, or a deputy doesn't know, then I ask who should know the law? It may be that he will rely upon others. If so, that is no defense. He is presumed to know the law and is presumed to know what his fees are, and when he collects any larger amount the law holds him responsible. Now, in that connection—I will not take your time to read it—there is another section of the code to this effect: That when the insurance commissioner or his deputy deems it necessary to examine an insurance company, he may repair to the office of that company and may make an examination, and may ascertain what the status of that company is, and be reimbursed for his actual expense; and upon presenting a detailed and itemized statement of his expense, it shall be the duty of that company to pay him. If the company refuses to pay within a reasonable time, the commissioner shall revoke its certificate to do business in this state. The commissioner is required to make out a statement of his expenses, and present the same to the auditor, who will issue his warrant, drawn in the usual manner on the state treasurer, to the person making the examination, at which time the expense account will be paid, and the insurance commissioner shall thereupon revoke the license of the company. So I submit to you that Mr. Schively had no right under the law to go to any insurance company and say, I want so much in advance before you can come into this state.

These few preliminary remarks are to show the law governing this case, and bear in mind when the evidence is introduced there are two provisions of law which you ought to have before you; one is, the deputy insurance commissioner of this state was invested with all the powers of his superior officer and had the right to issue licenses and revoke licenses, all of which he did. Bear in mind that the fees demanded by Mr. Schively were prescribed by statute. An additional section of the statute, in effect at that time, was that he had no right whatever to demand an examination fee in advance, because the statute specifically says that only after he presents a detailed statement of his expense shall he be reimbursed, and he was not entitled to be reimbursed until he made a detailed examination and filed a detailed report. In this connection we will show you in some of these instances, if not in all, that this money was extracted as an advance entrance fee, and in no single instance was the company examined; and in another instance we will show you that Mr. Schively used what he called a sliding scale, which varied from two hundred to two hundred and fifty dollars, and that the state only received thirty-five dollars, which was the statutory fee. The inquiry then arises, what became of the balance?

Article 3 alleges that in September, 1908, when the Boston Insurance Company, of Boston, Mass., entered the State of Washington, the company paid the said J. H. Schively, deputy insurance commissioner, \$100.00 for verification of report, which amount was receipted for by J. H. Schively, deputy insurance commissioner, on September 14th, 1908; that the State of Washington never received the \$100.00, nor any part thereof, and that J. H. Schively, deputy insurance commissioner,



was not authorized nor permitted by statute to collect this or receive any other amount for verification of report. Wherefore the said J. H. Schively, as deputy insurance commissioner, in demanding of and receiving from the said Boston Insurance Company \$100.00, was guilty of extortion, high crimes and misdemeanors and malfeasance in office. The next article alleges the same offense. only in the subsequent instance there was only \$35.00 collected instead of \$100.00 as in the preceding article. It is alleged in article 4 that he received nothing but the \$35.00. The two additional articles, 19 and 20, present different questions. Article 19 alleges that on June 12th, 1906, said J. H. Schively, as deputy insurance commissioner of the State of Washington, examined the Farmers' Mutual Live Stock Insurance Company, of Spokane, Wash.; that said examination was perfunctory in its nature and consumed less than half an hour; that said Schively demanded of and received from said company the arbitrary sum of \$100.00 for said examination, which sum was greatly in excess of his expenses incurred in said examination; that said Schively did not at that time nor at any other time present to said company any detailed or itemized statement of his expenses incurred in making said examination, as by law he was required to do. The second allegation, or the second paragraph of article 19, is as follows:

That on October 9th, 1906, E. E. Ligget, insurance commissioner of the State of Idaho, and said J. H. Schively, deputy insurance commissioner, made a joint examination of the affairs of said Farmers' Mutual Live Stock Insurance Company, of Spokane, Wash., for which examination a demand for \$300.00 was made and a check was issued by said company to said Ligget on the understanding then and there had with the said Ligget and Schively by the officers of the said company that said Schively should receive one-half of the amount of \$300.00 in payment of his fees for such examination, which sum was greatly in excess of the expenses incurred in the said examination; that this subsequent examination was also a perfunctory examination, consuming possibly one-half hour; that said Schively did not at this time nor at any other time furnish said company with a detailed nor itemized list or statement of the expenses incurred in making the examination, as by law required. Wherefore the said deputy insurance commissioner, J. H. Schively, by reason of not presenting a detailed statement of such expense and by demanding and receiving a sum greatly in excess of his expenses incurred in said examination, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

We expect to prove to you, gentlemen of the Senate, in this connection that Mr. Schively, if he had lived like a king, couldn't have possibly spent that much. We expect to show you that while he went there and made that arbitrary demand he was extorting from that company whatever the traffic would bear. We will show you that he could not possibly have spent that amount of money, and if he had presented a detailed statement of his expenses, as the law required him to do, that he should not have collected more than one-half of that amount, or possibly one-third of the amount; and the pertinent inquiry arises again, what did he do with the balance? I desire that you bear in

mind all the time that he did this under color of office as deputy insurance commissioner. Bear in mind that he was acting under color of office. The statute required him to do such things, and in no single instance did he present a detailed statement, as the law required him to do.

With this brief opening statement as to the law and facts, the managers will now proceed with the introduction of evidence in support of these articles.

BY THE PRESIDING OFFICER: I understand that you have made the entire opening statement, Mr. Lee.

BY MR. LEE: I think we are entitled to an additional opening statement, and will grant counsel the same right when we come to these other articles.

BY THE PRESIDING OFFICER: The rules read that the case on each side shall be opened by one person; now, does counsel desire further time to make further or additional statements?

BY MR. MANAGER EDGE: I think this is the situation as to these articles: The agreement has been made, and counsel called the court's attention to it a few moments ago, and I thought it was understood, that immediately preceding the introduction of proof on the twenty-fifth article, counsel be permitted to make an opening statement on the twenty-fifth article, and that was the rule adopted at that time; and this is simply as to the articles preceding 24. Twenty-four has to do with the Pacific Live Stock Company.

BY THE PRESIDING OFFICER: Does counsel for the respondent at this time desire to make any statement?

BY MR. ISRAEL: I do not want to make any opening statement until I have heard the opening statement of the managers under the rule. The rules are quite plain, and the rules are to the effect that one counsel on each side shall make the opening statement. I do not care to make my opening statement piecemeal, nor do I care to reply to an opening statement piecemeal; and I don't care to make any opening statement until your honor has heard all the opening statements to be made by the managers.

BY THE PRESIDING OFFICER: I think at this time the complete opening statement should be made, according to the rules.

BY MR. LEE: I am willing to proceed with the statement.

BY THE PRESIDING OFFICER: You may proceed.

BY MR. LEE: *Mr. President and Gentlemen of the Senate*—Conforming to the rule of the Senate that the entire opening statement must be made at one time, I challenge the attention of the senators to two other articles, which are 17 and 18. In connection with article 17, we allege that on July 31, 1907, said J. H. Schively, as deputy insurance commissioner, made a perfunctory examination of the Washington Hardware and Implement Dealers' Mutual Fire Association, of Spokane, Washington; that he demanded \$200.00 for such perfunctory examination, extending over only a short time; that upon the failure of the secretary to pay that amount, for the reason that it was excessive, exorbitant

and extortionate and outrageously high for the time he had been there. Mr. Schively, then deputy insurance commissioner, and by and under color of his office, stated that he would reduce the amount from \$200.00 to \$100.00, and thereupon the \$100.00 was paid him; that he receipted for it as deputy insurance commissioner. We will show in connection with that item that there was no detailed statement of expenses presented, as required by law; we will show that that charge was exorbitant and excessive, and we will show that Mr. Schively violated the law not only in taking more than was coming to him, but in not following the statute.

In article 18 identically the same charge is alleged, except as to a different company. We allege there that on December 12, 1906, he went to the officers of the Western Union Life Insurance Company, of Spokane, Wash., demanding an examination fee, which he had a right to do; that he made an examination of the affairs of that company and charged his usual flat rate of \$200.00. We will show that was an excessive charge, that he didn't spend in that examination but a few hours, and that if he had gone to Spokane and examined that company and returned, he could not have possibly spent more than \$50, even if he smoked 25-cent cigars. We will show that that was extortion and outrageously high, and the question will arise in your mind as to what became of the \$175.00. We allege that later he made another examination of that company and charged \$35.00, which he was by law required to do, but that no detailed statement of expenses was rendered. I am at loss to understand how a deputy can go and spend about the same amount of time and charge \$200 for one examination and \$35.00 for another. Article 20 relates to the following charge:

That subsequently and on July 29, 1907, an official examination was made of the same company; that in each case said Schively demanded of and received of this company the arbitrary sum of \$200.00 for making such examination, which sums were greatly in excess of his expenses incurred in said examinations; that in neither case did said Schively present to said company an itemized or detailed statement of expenses incurred in making said examinations, or either of them, as by law he was required to do.

First he made an examination on April 6th, 1907, and again on July 29th, 1907. You will notice in article 20 that the two examinations followed each other by a very few months. The law contemplates that the insurance commissioner should examine the company annually, and why he should examine this company, which is now defunct and notoriously so, within such a short time after the first examination is hard to understand. And in each case he demanded from that company as an examination fee the sum of \$200.00. We allege that it was in excess of his expenses, and we intend to prove that allegation. We intend to show you that a trip to Spokane could not possibly amount to more than \$35.00, and the question arises again, what became of the balance? Whether he was employed as a deputy insurance commissioner or employed in any character, I say that it shows at that time and now that he is unfit to hold the office which he now occupies.

Whether or not it is technically extortion, I care not; we charge that a man who does those things under color of office is guilty of malfeasance in office; otherwise I submit to you that the term "malfeasance in office" is deprived of all significance.

In article 21 exactly the same offense is alleged as occurring on May 7th, 1907, when Mr. Schively, as deputy insurance commissioner, repaired to the office of the Union Guarantee Association, of Portland, Oregon, as he had a right to do. He had a right to go there and make an examination of that association. We allege that after the examination he collected the sum of \$200.00. We will show that this was greatly in excess of his expenses. We will show, too, that he did not make a detailed statement of his expenses, as by law he was required to do, because if he had he would not have received over \$35 or \$50. That, we allege, was extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

In article 22 we allege the same thing, except in article 22 he drops from \$200.00 to \$50.00; and we allege in article 22 that the sum of \$50.00 was not only excessive, but that he failed to comply with the law as the law directs by filing a detailed statement of expenses; and that by reason thereof he was guilty of extortion, arbitrary and oppressive conduct and malfeasance in office.

In article 23 we allege a different state of facts, and I direct your attention especially to article 23, which is slightly different, and which we expect to prove exactly as alleged. In article 23 the facts were these: The company made inquiry as to what the entrance fees were in this state. The reply was the usual one—the entrance fee was \$235.00. They became alarmed and wrote to a man in Seattle by the name of C. S. Best, one of the best insurance firms in the entire country. Mr. Best, being familiar with the insurance laws in this state, that Mr. Schively is presumed to be familiar with, immediately notified the company, not knowing that the company had written the insurance department, that the entrance fee would be \$35. Thereupon the company took it up with Mr. Best further and he came to Olympia and had a discussion with Mr. Schively, in which he took Schively to task for attempting to extract the extortionate and unwarranted fee. We will show you by the evidence that when this occurred, Mr. Schively said to Mr. Best: "On account of your standing, if I had known that you wanted to represent the Atlas Insurance Company in the West, I would have admitted your company on the basis of \$35." Whereupon the Atlas Insurance Company, of Des Moines, Iowa, became indignant and refused to enter the State of Washington, and I think they have not entered the state, unless possibly within the last few months. That may not be extortion, because he did not get the money, but if that isn't malfeasance in office, arbitrary and oppressive conduct, then I say to you those terms have no meaning. He did it under color of his office. He had a right to make representations to them, and he made unlawful representations, all of which he was presumed to know at the time.

Passing to article 24, we have another of these facts. On July 10th, 1906, the Pacific Live Stock Association, of Spokane, was tottering; they wanted someone there to inject new life and energy into that company, and so they had Mr. Schively come over. Mr. Schively assumed the presidency of the tottering Pacific Live Stock Association at the time when he knew, or he must have known, that it was defunct. At that time he drew in salaries and commissions approximately \$2,500 in three months. Did he resign as deputy insurance commissioner? He said he handed in his resignation, but that it wasn't acted upon, but that he drew his salary as deputy insurance commissioner of the State of Washington, and at the same time he drew over \$800.00 from this defunct association, plus \$125 or \$150, making a salary of something like \$1,000.00 a month. No wonder it was an inviting and fascinating proposition. At that time, bear in mind, he was deputy insurance commissioner; that he had the right to examine that company; he had the right to revoke its license, but he did not examine the company and did not revoke the license until a few months after Mr. Schively stepped out. We claim, then, that he was guilty of conduct unbecoming a public official, gross impropriety, malfeasance in office, high crimes and misdemeanors. He did these things while he was a public official of the State of Washington, and we claim the evidence will sustain it. We allege further that he made official examinations of that company, in one instance charging them \$100.00 and in another instance \$200.00, both of which amounts were extorted unlawfully, because he did not present a detailed statement of expenses, as the law required him to do. A little further on in that same article we read that shortly after he left that company he wrote a letter, which is admitted in his answer, to Mr. W. T. Melvin, of Everett, Washington, the original of which will be presented to you, over his own signature, stating that that was one of the most reliable and stable live stock associations in the State of Washington, well knowing at the time, or he must have known, the defunct condition of that company. It was his duty as president of that company to know the condition of the company. We will show these facts: *First*, that he continued to hold the office of president of that association, and drew a salary and commissions from that association and also a salary from the State of Washington during the same period; *second*, during his connection with the association as president and while he was deputy insurance commissioner he received from the association fees which were greatly in excess of actual expenses for examinations of said association; and, *third*, that when he wrote the letter to the gentlemen in Everett he must have known at the time of the defunct condition of the organization; and if those things don't constitute extortion, don't constitute a crime against which an indictment or information can be returned, it would constitute the grossest kind of misconduct in office.

Article 25 relates to the perjury charge, and with counsel's consent we will reserve our right to make the opening statement on it apart from the preliminary.

Article 2 relates to the Lebo incident. When Mr. Lebo came to Olympia he asked Mr. Schively in person to inform him as to the entrance fees. Mr. Schively stated that they would be \$235.00 for each company. Mr. Lebo was in hard straits and said, "I cannot pay the amount at this time," and Mr. Schively thereupon agreed to reduce the amount. What authority under the law has an insurance commissioner to reduce the entrance fee? After a brief consultation he reduced the entrance fee from \$235.00 for each company to \$137.00 for one company and \$37.00 for another, at that time and that place stating to that young man that he could pay the balance as soon as he got ready, and not to worry. We submit that all of these offenses constitute gross improprieties, malfeasance in office and high crimes and misdemeanors. Upon the testimony supporting them we expect a conviction.

BY THE PRESIDING OFFICER: Mr. Israel, do you desire to make an opening statement on behalf of respondent at this time?

BY MR. ISRAEL: No, sir. I want to say, your honor, I want to stand with my agreement with counsel, notwithstanding the rule that he shall have the right to reserve his opening statement as to article 25— notwithstanding the rule—until he gets ready. I do not believe I have to make my opening at this time.

BY SENATOR PRESEY: Will you please explain to me section 26? I desire simply to know what the status of that article is.

BY THE PRESIDING OFFICER: Counsel made no statement with reference to section 26.

BY MR. LEE: We have nothing to say on article 26 at this time.

BY MR. ISRAEL: I do not understand from that you will not want to make a statement at all, at any time.

BY MR. LEE: No, sir.

BY MR. MANAGER SPARKS: We simply reserve the right to introduce evidence.

BY MR. LEE: Relating to the proof on article No. 3, we have a deposition to offer—one from Mr. Wm. R. Hedge, of Boston, Massachusetts, and one from Mr. George O. Hoadley, of San Francisco, California, under commissions issued from this court of impeachment for the taking of such depositions. Opportunity was given counsel to submit interrogatories, but none were presented, and none are presented at this time. I understand that these have been regularly submitted to the clerk of this court, and I desire to have the clerk read these depositions.

BY MR. ISRAEL: Which one is the clerk going to read first?

BY THE PRESIDING OFFICER: The secretary will read the deposition of Mr. Hedge first.

BY MR. ISRAEL: Just read the questions and answers; never mind the first of it.

BY MR. MANAGER MEIGS: Read where it shows that he was sworn.

BY THE SECRETARY: Deposition of William R. Hedge—

(1) Q. State your name and residence.

A. William R. Hedge, Boston, Massachusetts.

(2) Q. State your connection, if any, with the Boston Insurance Company, of Boston, Massachusetts.

A. Vice-president.

(3) Q. State what position, if any, you held with that company in August and September, 1908.

A. Vice-president.

(4) Q. Has your company been admitted to do business in the State of Washington, and if so, when was it so admitted?

A. It has. It was readmitted August 29th, 1908.

(5) Q. State if you know who made application on behalf of the Boston Insurance Company for admission to the State of Washington.

A. Gordon & Hoadley, our general agents; headquarters at San Francisco.

(6) Q. If you answer that the application was made through certain agents, were such agents authorized by your company to make such application?

A. Yes.

(7) Q. State, if you know, what entrance fees were paid to the insurance department of the State of Washington on behalf of the Boston Insurance Company in securing such admission.

A. Entrance fee \$35.00, August 29th, 1908; September 14th, verification of report, \$100—paid through Gordon & Hoadley.

(8) Q. Did your company take or receive receipts or vouchers for the payment of interest fees?

A. Yes.

(9) Q. State whether or not the purported receipts signed by J. H. Schively as deputy insurance commissioner, marked exhibits "A" and "B" respectively, and attached hereto, are the original receipts received by your company for the payment of such entrance fees.

A. Yes.

(10) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, on August 29th, 1908, or at any time subsequent to said date, made an examination of the books, records, or securities of the Boston Insurance Company, were you in a position to know of such examination?

A. Yes.

(11) Q. State whether or not any such examination was ever made.

A. Not as yet.

WILLIAM R. HEDGE.

Subscribed and sworn to before Fisher Ames, a notary public in and for the Commonwealth of Massachusetts, residing at Boston.

BY MR. MANAGER MEIGS: Please read the exhibits attached to that deposition.

BY MR. ISRAEL: That with reference to article No. 3?

BY MR. MANAGER MEIGS: Yes, this is on the same article.

BY THE SECRETARY: The exhibits that appear attached to the interrogatories are as follows:

EXHIBIT "A."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
\$100.00 OLYMPIA, September 14th, 1908.  
Received from Boston Insurance Company one hundred dollars  
(\$100.00), account of verification of report.

No. 1976. J. H. SCHIVELY,  
Deputy Insurance Commissioner.

## EXHIBIT "B."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
\$35.00 OLYMPIA, August 29th, 1908.

Received from Boston Insurance Company thirty-five dollars, account of entrance fees.

(Signed) J. H. SCHIVELY,  
No. 546. *Deputy Insurance Commissioner.*

BY THE SECRETARY: Deposition of George O. Hoadley.

(1) Q. State your name and residence.

In answer to interrogatory No. 1, the witness saith: George O. Hoadley, San Francisco, California.

(2) Q. State what connection you had with the Boston Insurance Company, of Boston, Massachusetts, in August and September, 1908.

In answer to interrogatory No. 2, the witness saith: General manager Pacific Coast department, with Harry F. Gordon; this firm is a copartnership, and the copartnership has the Pacific Coast agency for this company.

(3) Q. If you state that you or your firm were at that time agents for said company, state whether or not as such agents you made application for said company to do business in the State of Washington, and, if so, in what manner such application was made.

In answer to interrogatory No. 3, the witness saith: We made application in writing in August, 1908. This application was in writing and is a part of the records of our office.

(4) Q. If you state you made application by letter, what representative of the insurance department of the State of Washington did you receive a reply from, if at all, and what representations, if any, were made in such reply as to the entrance fees required for admission?

In answer to interrogatory No. 4, the witness saith: I cannot find that we ever received a reply. Afterwards we turned the matter over to our traveling representative and he completed the arrangement for the admission of the company. Since receiving notice of the taking of this deposition I have made a careful search through the files of our office and have been unable to find any reply to the written application. Our traveling agent, who was then in the State of Washington, I think took the matter up personally with the department there, and what negotiations he had with them I do not know, nor does Mr. Gordon know.

(5) Q. Did you enter the Boston Insurance Company in the State of Washington subsequent to the date of said letter, and if so, what amount was paid as entrance fees?

In answer to interrogatory No. 5 the witness saith: We did enter it. In addition to the usual fee for entrance, one hundred dollars was paid to cover verification of the company's affairs. We paid this by check, such check being No. 1887, and being the firm check of Gordon & Hoadley. This check was drawn on the American National Bank, of San Francisco, and bears date August 31st, 1908, and was drawn to the order of J. H. Schively, deputy insurance commissioner. The canceled check was returned to us and bears the following indorsement: "J. H. Schively, Depu. Ins. Com'er, Pay to the order of the Capital National Bank of Olympia, Sam H. Nichols, insurance commissioner; pay to the order of First National Bank, of San Francisco, California; Capital National Bank, Olympia, Washington, W. J. Foster, Cashier." I do not think this check should leave the possession of the firm, because it is firm property and part of our record.

(Signed) GEORGE O. HOADLEY.

Subscribed and sworn to before N. E. W. Smith, notary public in and for the city and county of San Francisco, California.



BY MR. LEE: That completes the proof on article No. 3—the depositions of Mr. Hoadley and Mr. Hedge, one being the president and manager of the company, and the other the western representative. If counsel has nothing to offer, we will proceed to the proof on article No. 4.

BY MR. ISRAEL: I do not have to offer anything at this time.

BY MR. LEE: You do not have to; I am asking you if you had anything.

BY THE PRESIDING OFFICER: Mr. Meigs has requested me to ask if Mr. Lebo is in the room at this time.

[No response from Mr. Lebo.]

BY THE CHAIR: He apparently is not in the room, Mr. Meigs.

BY MR. LEE: Prior to the introduction of the deposition in connection with article No. 4, I desire to read the article.

#### ARTICLE IV.

That the said J. H. Schively, as deputy insurance commissioner, on February 19th, 1907, demanded of and received from the Capitol Life Insurance Company, of Colorado, the sum of two hundred and thirty-five dollars, two hundred of which appears in the receipt given by said Schively for verifying the report; that from this amount the state received nothing but the thirty-five dollar entrance fee; that the said J. H. Schively had no authority in law for the collection of anything but the thirty-five dollar entrance fee from said company.

Wherefore, the said Schively in demanding and receiving from the said Capitol Life Insurance Company the sum of two hundred and thirty-five dollars, was guilty of extortion, high crimes and misdemeanors, and malfeasance in office.

BY MR. LEE: In connection with article No. 4, the House, through its boards of managers, offers the deposition of George Graham, Jr.

BY THE PRESIDING OFFICER: At this time, the court will take a recess for ten minutes before taking any proof on that article.

[Recess.]

BY THE PRESIDENT: Senator Booth will take the chair.

BY MR. LEE: Mr. President, before passing to the proof of article 4, there is one other element of proof I want to offer in connection with article 3.

BY THE PRESIDING OFFICER: Proceed.

Miss Ivy Ferguson, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. LEE: Q. Miss Ferguson, just state your name.

A. Ivy Ferguson.

Q. And you are employed with the insurance department of the state?

A. Yes sir.

Q. And how long have you been so employed?

A. Over six years.

Q. Were you there in September, 1908?

A. I was.

Q. When insurance companies apply for admission and the entrance fees are received, state what entries are made of those fees which the state received.

A. A voucher is given to the company for the amount received.

Q. And how is that entry made—on what books, if any, in the insurance department—showing the amount received?

A. The entry is made from the voucher book into the ledger of the department.

Q. Examine this [*hands the book to witness*], and state whether or not it is the original ledger book of the insurance commissioner's office.

A. That is the original ledger.

Q. State if all the advance fees or entrance fees received from various companies were placed in that ledger book.

A. What is the question?

Q. Are the entrance fees received from the company placed in that book?

A. The statutory fees, yes.

Q. Now, examine page 347 of this book and state what the book discloses as to what entrance fee, if any, was received from the Boston Insurance Company; and if so, when?

A. The entrance fee of the Boston Insurance Company, amounting to thirty-five dollars, was received, or at least vouched for—receipted for—on August 29th, 1908.

Q. Who made these entries, Miss Ferguson?

A. I did.

Q. Would those indicate the amount the state received from that company at that time?

A. Yes.

Q. Do you know whether or not any other funds were received from this company at this time?

A. I do not.

Q. You are willing to state now, are you, that this is the amount indicated in the original ledger that the state received from this company?

A. Yes.

Q. That is all.

By MR. ISRAEL: That is all, Miss Ferguson.

By MR. LEE: And we enter this original ledger in evidence.

By MR. ISRAEL: Had counsel called my attention to this matter, your honor, before he called this witness, I would have admitted cheerfully that all the money received at that time by the State of Washington was thirty-five dollars, as shown by this ledger.

By MR. LEE: Will you admit it as to the next article. If you will, we can excuse Miss Ferguson and expedite this matter wonderfully.

By MR. ISRAEL: Why, certainly; the state received this thirty-five dollars.

By MR. LEE: And nothing more?

By THE PRESIDING OFFICER: The witness is excused.

By MR. LEE: In order to preserve the record properly, Mr. President, I think that we will retain this witness for proof in the next case.

By THE PRESIDING OFFICER: I don't see why you should take up the time of the Senate in proving matters admitted by counsel for respondent.

By MR. LEE: It is simply a question, Mr. President, whether we can stipulate on evidence in a case which counsel contends is criminal or *quasi*-criminal.

By MR. ISRAEL: I want your honor right now, and I now move to strike these depositions. You cannot use depositions in a criminal case. I make the formal motion now that you strike the depositions on the admission of counsel that this is a criminal case.

By MR. LEE: The distinguished counsel for respondent is always ready to jump on our back. The presiding officer did not hear such an admission, and counsel did not hear it. I said that according to counsel's contention, this was a criminal or *quasi*-criminal case.

By THE PRESIDING OFFICER: The depositions will not be stricken. There need be no further argument on that.

By MR. LEE: We will proceed with proof on article 4. I believe article 4 has been read to the Senate. In this connection we offer in evidence the deposition of Mr. George Graham, Jr.

By THE PRESIDING OFFICER: The secretary will read the deposition.

By THE SECRETARY: Deposition of Mr. George Graham, Jr.—

(1) Q. State your name and residence.

A. George Graham, Jr., No. 204 Tabor Opera House block, Denver, Colorado.

(2) Q. What connection, if any, did you have with the Capitol Life Insurance Company, of Colorado, in February, 1907.

A. None, at that date. I became connected with the company on November 1st, 1907, as actuary.

(3) Q. State if you know whether or not J. H. Schively, as deputy insurance commissioner of the State of Washington, in 1906 or 1907, made any representations to your company concerning fees necessary for entrance to the State of Washington, and if so, how were such representations made?

A. Yes. Such representations were made by letter in answer to inquiry of our company.

(4) Q. If you answer the foregoing questions in the affirmative, and that the representations, if any, were made by letter, state whether or not the purported letters, signed by J. H. Schively, a deputy insurance commissioner, marked respectively exhibits "A" and "B" and attached hereto, are the original letters received by your company containing such representations.

A. Yes sir, they are.

(5) Q. Did the Capitol Life Insurance Company, of Colorado, subsequent to the receipt of said letters, or either of them, enter the State of Washington, and if so, what fees were paid for such entrance?

A. It did. It paid two hundred and thirty-five dollars, covering thirty-five dollars for statutory fee and two hundred dollars for verification of the company's first report.

(6) Q. If you answer the foregoing question in the affirmative, did your company receive a receipt from J. H. Schively, as deputy insurance commissioner, for the entrance fee paid.

A. It did.

(7) Q. If you answer the foregoing question in the affirmative,

state whether or not the purported receipt signed by J. H. Schively, as deputy insurance commissioner, marked exhibit "C," and attached hereto, is the original receipt so received?

A. Yes, it is.

(8) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, on February 1st, 1907, or at any time subsequent thereto, made an examination of the books, records or securities of the Capitol Life Insurance Company of Colorado, would you know of such examination having been made?

A. Yes.

(9) Q. If you answer the foregoing question in the affirmative, state whether or not such examination was ever made.

A. From inquiry from officers of the company, whose duty it is to know, I have learned that no such examination was made between February 1st, 1907, and November 1st, 1907. I know of my own knowledge that no such examination has been made since November 1st, 1907.

GEORGE GRAHAM, JR.

Subscribed and sworn to before me this 25th day of July, A. D. 1909. My commission expires April 3, 1913.

[Seal]

THOMAS R. WOODROW,  
*Notary Public in and for the City and  
County of Denver, State of Colorado.*

#### EXHIBIT "A."

STATE OF WASHINGTON, OFFICE OF INSURANCE DEPARTMENT.  
OLYMPIA, May 21, 1906.

*W. T. Standen, Actuary, Capitol Life Ins. Co., Denver, Colo.*

DEAR SIR: Under separate cover, I forward you blanks in duplicate necessary to be filled out in seeking admission to the transaction of business in this state, together with such other information as you will require. The entrance fees are two hundred and thirty-five dollars—\$35.00 statutory entrance fees, and \$200.00 for the verification of your securities and first report, all of which must be paid in advance. The cost of verification exempts you from further expense in this respect.

Licenses for soliciting agents cost \$5.00 each, and must be issued to the individual and not in a firm name. Should a firm be appointed by you, each member thereof must have a license.

Very truly yours,

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

Exhibit "A." T. R. W.

#### EXHIBIT "B."

STATE OF WASHINGTON, OFFICE OF DEPARTMENT OF INSURANCE.  
OLYMPIA, February 1, 1907.

*William T. Standen, Actuary, Capitol Life Ins. Co., Denver, Colo.*

(Received Feb. 5th, 1907.)

DEAR SIR: Under separate cover, I forward you copy of our insurance laws, together with circular letter and all blanks necessary to be filled out in seeking admission to the transaction of business in this state. The entrance fees are \$235.00—\$35.00 statutory fees and \$200.00 for the verification of the company's first report and securities, all of which is payable in advance.

Very truly yours,

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

Exhibit "B." T. R. W.

## EXHIBIT "C."

INSURANCE DEPARTMENT, STATE OF WASHINGTON.  
OLYMPIA, February 19, 1907.

\$35.00

Received from Capitol Life Ins. Co. two hundred thirty-five no-100 dollars, entrance fees, \$35.00; verifying report, \$200.00.

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

No. 2766

Exhibit "C." T. R. W.

Miss Ivy Ferguson was again produced as a witness for and on behalf of the complainants herein.

BY THE PRESIDING OFFICER: May I ask Mr. Lee, if this is to be the same evidence as you put in on article 3.

BY MR. LEE: It is the same thing.

BY THE PRESIDING OFFICER: It strikes the presiding officer that the admission having been made in open court of all the facts that the prosecution intends to prove by this witness, there is not any necessity of taking up the time of the Senate with her testimony.

BY MR. LEE: Very well, if the presiding officer insists, I will abide by the decision. We want the record to show that Miss Ferguson testified in connection with article 4 as follows: That she made the entry in the ledger concerning the entrance fee of the Capitol Life Insurance Company, of Colorado; that the original entry in the original ledger of the office shows that the state received \$35.00 and no further or greater sum.

BY MR. ISRAEL: That is all admitted, your honor. There is no necessity of proving it.

BY MR. LEE: This is simply to preserve the record, your honor.

BY MR. LEE: That concludes the proof, Mr. President, on articles 3 and 4. The next article, Mr. President, will be article 19.

J. S. Lichty, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. LEE: *Mr. President and Gentlemen of the Senate—Before proceeding with the testimony I will read article 19:*

[Article 19 read.]

Q. Mr. Lichty, state your name to the Senate.

A. J. S. Lichty.

Q. And your residence.

A. Spokane, Washington.

Q. State whether or not you have ever been identified with the Farmers' Mutual Livestock Insurance Company, of Spokane?

A. I have.

Q. When?

A. All the time.

Q. Well now, give the dates of that connection.

A. From April, 1906, until January, 1909.

Q. State what official position, if any, you held with that company?

A. Treasurer.

Q. During the entire time?

A. Yes, sir.

Q. State what examination, if any, was made of your company by J. H. Schively, deputy insurance commissioner of the State of Washington—stating the time when it was made, the circumstances under which it was made, the time consumed, and the money paid.

A. He never made any examination of the company.

Q. Go ahead and detail what you mean by that statement.

A. The only times Mr. Schively came to our office was at two different times, when he collected one hundred dollars the first time, and another a hundred and fifty dollars the second time, to permit us to continue business. It was more in the nature of a visit than that of an examination.

Q. State to the Senate if you remember whether or not, on or about June 12th, 1906, Mr. Schively, as deputy insurance commissioner, visited your company in Spokane.

A. He did.

Q. State to the Senate all the circumstances as you remember them attending that visit.

A. He came to the office of the company and our president talked the matter over with him and told him we wanted permission to do business.

BY MR. ISRAEL: One moment, pardon me. Were you present at the conversation?

A. I was. And after general conversation the president brought him in to my office with a warrant drawn on me for one hundred dollars. I made out a check, payable to J. H. Schively, and gave it to him.

Q. Have you that check?

A. I have.

Q. Canceled check?

[The witness produces checkbook and shows check. Check submitted to opposing counsel.]

Q. Was this check that you hold in your hand [*hands to witness*], Mr. Lichty, the check that was paid to Mr. Schively at that time?

A. It is.

Q. Was that check paid by your company?

A. It was.

Q. State whether you know this check was given to Mr. Schively in payment of his visit there at that time or his examination at that time?

A. Well, he did not examine the company. It was given to him because he demanded it.

Q. Demanded it in your presence?

A. Yes, sir.

Q. State to the Senate what was said and done at that time—what Mr. Schively said and what he did.

A. Well, Mr. Schively said that his usual charge was two hundred dollars, but Mr. Farnsworth, our president, told him that he ought to cut that down for this company. It was just beginning business and it would be a little hard on the company to pay such a big fee; and our president thought he did good work to have it cut down to one hundred dollars.

Q. State what Mr. Schively said, if anything, about reducing the original amount of two hundred dollars.

A. He consented to receive one hundred dollars.

BY MR. LEE: I offer this check in evidence at this time.

BY THE PRESIDING OFFICER: Any objections?

BY MR. ISRAEL: No.

BY THE PRESIDING OFFICER: The check will be admitted.

BY MR. LEE: Before it is admitted I would like to have the witness read it to the Senate.

A. "Spokane, Wash., June 12th, 1906. No. 1042. Farmers' and Mechanics' Bank, a State Bank. Pay to the order of J. H. Schively one hundred dollars (\$100.00). Signed, Farmers' Mutual Livestock Insurance Company, J. S. Lichty, Treasurer."

Q. Are there any endorsements on the back?

A. The endorsement on the back is "J. H. Schively."

BY MR. LEE: I offer this in evidence.

BY THE PRESIDING OFFICER: The check will be admitted.

BY MR. ISRAEL: Well, your honor, I have no objections to it being put in evidence, but right now we might as well straighten out this discussion. I would not have permitted it to be read without it was offered in evidence. It should not have been read first and then offered. I understand it was offered first and then read.

BY THE PRESIDING OFFICER: I asked counsel if there was any objection and he said no, and the check was in evidence before it was read.

[Check marked "Article XIX, Complainant's Exhibit No. 1."]

Q. State whether or not if you know if there was any detailed or itemized statement of expenses presented to the company at this time or to yourself by Mr. Schively.

A. There was not.

Q. State whether or not, if there had been such a statement of expenses presented, you would have known about it.

A. I would.

Q. State to the Senate how long, if you know, Mr. Schively was in that office at the time.

A. About half an hour.

Q. That was at the time this check for one hundred dollars was paid.

A. Yes, sir.

Q. Mr. Lichty, state to the Senate what your expenses to Olympia would be or were, taking one day to come and one to return and one day here.

A. At how much a day?

Q. I mean now, traveling expenses and legitimate expenses incurred—actual expenses.

A. Well, my ticket and sleeper was sixteen dollars and ten cents; but that is excursion rates—I don't know just what the rate is regularly—and about two dollars a day for the time.

Q. You don't know what the regular railroad fare is, from Spokane to Olympia, do you, Mr. Lichty?

A. Yes. They told me it was \$20.50 round trip.

Q. Assume then that to be the regular fare. What would your expenses be in Olympia for a day?

A. Oh, I am living for two dollars a day.

Q. What would they be in Spokane for a day.

A. About the same.

Q. State to the Senate then, if you can approximate it, what a trip from Olympia to Spokane and return would be with a day or two in Spokane.

A. About thirty dollars.

Q. State whether or not any subsequent examination was made of your company by Mr. Schively, as deputy insurance commissioner.

A. He never made any examination of the company.

Q. State whether or not he appeared in your office on or about October 9, 1906, with the insurance commissioner of the State of Idaho.

A. October 9th, 1906, he did.

Q. State to the Senate what was then and there said and done by Mr. Schively.

A. He and Mr. Ligget, the insurance commissioner of Idaho, came in together. We had not entered the State of Idaho with our company, and they came in together for the purpose of looking over the company's affairs, as we wanted to enter the State of Idaho; and our president, I think, solicited the efforts of Mr. Schively to help us to get into the State of Idaho with Mr. Ligget; and the president came into my office with these two gentlemen and introduced them and asked me to make out a check for three hundred dollars to pay these two gentlemen for their services, one hundred and fifty dollars apiece. I made out the check.

Q. Did you make out one check or two?

A. One check for three hundred dollars.

Q. State what understanding, if any, you had at that time as to the compensation that he should receive.

A. I asked Mr. Schively who I should make the check to. They said they only wanted one check, and he told me to make it to Mr. Ligget, and I did, with the understanding that it was to be divided equally between the two commissioners.

Q. That understanding was had then and there, was it?

A. Yes, sir.

Q. In your presence and in the presence of Mr. Schively and Mr. Ligget.

A. Yes, sir.

Q. Was there any examination made at that time?

A. Oh, no.

Q. Would you have known of an examination if there had been any made?

A. I would.

Q. You were treasurer of the company?

A. I was.

Q. And had possession of the books of the company?

A. Yes, sir.

Q. Was there any attempted examination made at that time?

A. Why, they looked over some of the notes that we held for premiums. There was no examination of the books.

Q. State what length of time was consumed in that examination or in that alleged examination.

A. About fifteen minutes—not over half an hour.

Q. State to the Senate whether or not, if you know, any detailed



or itemized statement of expenses incurred in that examination was presented at that time to you or to any official of the company in your presence.

A. None whatever.

Q. State if you know whether or not any itemized statement was presented at any subsequent time.

A. None whatever.

Q. If there had been an itemized statement presented, would you have known about it?

A. I would.

Q. In that connection, Mr. Lichty, as in the other connection, state to the Senate what your actual and necessary expenses are or would be from Spokane to Olympia and return, in putting a day or two in Spokane.

A. About thirty dollars.

*Cross-Examination—*

BY MR. ISRAEL: Q. Did I understand you, Mr. Lichty, that you had been connected with this company for a long time?

A. Sir?

Q. How long did I understand that you had been connected with this company?

A. From the beginning, about April, 1906, until January, 1909.

Q. Are you with the company now?

A. No, sir; the company is not in existence.

Q. The company is not in existence; is it incorporated?

A. Yes.

Q. Hands of receiver, is it—gone into insolvency, is it?

A. Yes.

Q. Went into insolvency?

A. Hands of receiver.

Q. Live stock company?

A. Yes.

Q. When did it go into the hands of a receiver?

A. About February, 1909.

Q. Now, before its going into the hands of a receiver, where was its office located?

A. Room 226, Columbia, part of the time and part of the time in the Rookery building.

Q. Where was it located at the time Mr. Schively came to make this examination, that the hundred dollars was paid for?

A. I think the first office was in the Jamison building, and I think it was in the Jamison at that time.

Q. Well now, the date fixed in this article is June 12th, 1906; where was your company office on June 12th, 1906?

A. I think it was in the Jamison building.

Q. How many rooms did your company occupy in the Jamison building?

A. One.

Q. Just one room?

A. Yes.

Q. Did your president have a desk in the room?

A. Yes.

Q. Did you have a desk in the room?

A. I did.

- Q. Any other officers have a desk in the room?  
A. No, I think not.
- Q. Did your president have any other office?  
A. I don't think so.
- Q. Was he engaged in any other business?  
A. No.
- Q. What was his name?  
A. Mr. Farnsworth—George Farnsworth.
- Q. Was he engaged in any other business or any other firm?  
A. No.
- Q. Did he make his headquarters in this room?  
A. He did.
- Q. How large a room was it?  
A. Oh, it was possibly 18 by 20.
- Q. How many people occupied it besides yourself and Farnsworth?  
A. I think that was all at the time.
- Q. Don't you know?  
A. Yes, I think I know.
- Q. Anybody occupy it before or afterwards excepting yourself while you were occupying it?  
A. While I was occupying it?
- Q. Yes, outside of yourself and Farnsworth?  
A. Yes, before this company occupied the room there were others occupied it.
- Q. Did you have a stenographer or bookkeeper at this time?  
A. No, sir.
- Q. Had no stenographer or no bookkeeper?  
A. No.
- Q. Positive of that?  
A. Yes.
- Q. At the time Schively came there?  
A. Yes.
- Q. What time in the day on the 12th of June did Schively come into your office?  
A. It was before noon.
- Q. How much before noon?  
A. Oh, I think possibly 10 or 11 o'clock.
- Q. Who came with him, if any one?  
A. Mr. Farnsworth.
- Q. Mr. Farnsworth came in with him?  
A. Yes.
- Q. What was the first thing Mr. Farnsworth said to you when he came in?  
A. He introduced me to Mr. Schively.
- Q. What did Mr. Schively say?  
A. I think the usual greetings.
- Q. Then what conversation occurred?  
A. Well, the conversation was on our business—doing the live stock business—and after they got through talking business, they had a general conversation—friendly conversation.
- Q. Were you present at all the conversations?  
A. I was.
- Q. Take part in it?  
A. I didn't take much part in the conversation; I was busy at the work.

Q. What were you doing?

A. Well, I don't remember what I was doing.

Q. You weren't so busily engaged but what you could hear what was going on?

A. I think not.

Q. How long was Mr. Schively in your office?

A. About a half hour.

Q. How far apart were your desk and the president's desk?

A. Across the room.

Q. Well, give us approximately the feet.

A. Well, I don't think we were over ten or twelve feet apart.

Q. Did Mr. Schively sit at Farnsworth's desk or your desk during the talk?

A. Mr. Farnsworth's.

Q. Mr. Farnsworth's desk?

A. Yes.

Q. Now, I would like to know generally what was discussed between Farnsworth and Schively before you were requested to draw the check after he came in?

A. Well, the conversation was principally about the amount we were to pay.

Q. About the amount you were to pay for the examination—the amount you were to pay Mr. Schively?

A. The amount we were to pay Mr. Schively.

Q. That was about all that was discussed in the office with you and Farnsworth, wasn't it?

A. Between Mr. Schively and Farnsworth as to business.

Q. That was about all that was discussed?

A. Yes.

Q. The coming of Farnsworth and Schively into the office resulted in an introduction of Mr. Schively to yourself?

A. Yes.

Q. And then the passing of the ordinary civilities of the day and the requesting of Mr. Farnsworth that you draw a check for Mr. Schively for \$100.00?

A. Yes.

Q. And you proceeded to draw the check?

A. Yes.

Q. And then the conversation turned upon various subjects, and he remained about a half hour and went away?

A. Yes.

Q. Who kept the books?

A. I did.

Q. And who entered the premiums?

A. I did.

Q. Had those all on your book; what was your place of deposit?

A. At that time it was the Farmers' and Mechanics' bank.

Q. Who kept the policy register?

A. The policy register was kept in my office, and I think I did most of it.

Q. Who wrote it?

A. I did.

Q. Mr. Farnsworth do any of it?

A. Part of it.

Q. There was no talk in your office then relating to the company's affairs beyond the request of Farnsworth that you draw a check, and the drawing of the check, and then a subsequent discussion generally as to the affairs of the insurance company?

A. That is about all.

Q. Had you seen Mr. Schively before that morning?

A. No, I had never met him.

Q. Was it before noon?

A. Yes.

Q. Do you know what Mr. Farnsworth and Mr. Schively had been doing that morning, before they came to your office?

A. No, I do not.

Q. Do you know if an examination had been made by Mr. Schively—now of your own knowledge; I don't want any hearsay.

A. Yes, I know all about it.

Q. You weren't present with Schively or Farnsworth during the entire morning, were you?

A. I was present all the time when they were present, in the presence of the books.

Q. Now, you had entered your company to do business in the State of Washington upon affidavit upon the 17th day of May, hadn't you?

A. Yes.

Q. You had entered this company with the insurance commissioner on the 17th of May to do business, granted a certificate to do business in the State of Washington?

A. No, we had a license to do business before that. I notice we have a check here to the order of Sam H. Nichols for \$36, dated April 4th, 1906; that was for the first year's license.

Q. Now, you made your proof on the 27th of May, of having written \$200,000.00 worth of insurance, didn't you?

A. I don't know when we made that proof.

Q. Well, you had made that proof prior to the coming of Mr. Schively, hadn't you?

A. I don't remember about that.

Q. Don't you know whether you made it before or after Mr. Schively's visit?

A. No, I do not.

Q. Did you make proof to the insurance department that you had written \$200,000 worth of business?

A. Yes.

Q. Have you got any memoranda there to tell you when you made that proof?

A. No.

Q. Don't you recall that it was before Mr. Schively came to Spokane?

A. It is quite likely so.

Q. Do you know whether Mr. Farnsworth requested Mr. Schively to come to Spokane and verify your statement, and examine your book of policies written?

A. Requested Mr. Farnsworth?

Q. Mr. Schively?

A. To come to Spokane?

Q. Yes.

A. I don't know.

Q. And the first you say you saw of Schively was that day he came into the office

A. Yes.

Q. And Farnsworth was then with him?

A. Yes.

Q. Now, you are quite certain you didn't have a stenographer in the office at that time?

A. The company had no stenographer.

Q. Mr. Farnsworth have a stenographer?

A. I don't remember; if Mr. Farnsworth had any one, I don't remember. I don't remember now whether I had a stenographer there at the time or not.

Q. Have you had one since?

A. Yes, I have had one since.

Q. Have one now?

A. No.

Q. When did you first begin using a stenographer in your business?

A. I don't remember when that date was.

Q. Did Mr. Farnsworth ever have a stenographer in this room?

A. Not up to that time.

Q. Well, that is not the question; did he ever have one at all?

A. Yes, afterwards.

Q. How long afterwards?

A. I think it was in September, about September or October of that year.

Q. September or October of 1906; but you are willing to swear that he did not have a stenographer there on June 12th, 1906?

A. No, I wouldn't swear to it. I can't remember whether I had a stenographer then or not.

Q. Have you got your general check book there?

A. Yes, for the company.

Q. Find the first stenographer's check; just turn to May and June of your check book.

BY MR. LEE: I don't see the materiality of this at this time. I have allowed counsel a wide latitude, but when it comes to looking up the stenographer's checks, I can't see any materiality to that.

BY MR. ISRAEL: I want to fix the parties present during that half hour. It is in the nature of an impeachment for the purpose of disputing the witness, and for the purpose of determining who was in the room at that time.

BY THE PRESIDING OFFICER: Proceed.

BY MR. ISRAEL: Q. Do you know, have you got your June checks there, from the first of June to the thirtieth?

A. Yes; I haven't got the checks between June 12th and August 20th here.

Q. Do you know Mr. Shrock?

A. I do.

Q. Do you remember Mr. Schrock being in your office in June, 1906; of his being in your office at any time along about the twelfth of June, or before the twelfth of June?

A. No, I don't think Mr. Shrock was ever in my office or in the company office.

Q. You don't think he ever talked in your office with a stenographer, before the twelfth?

A. No.

Q. I understand you that you have no check in your check book

between the first of June and the twentieth of August, so that you can tell who you paid anything to?

A. No.

Q. But you have the checks before and since?

A. Yes.

Q. Do you know anything about what inquiries Mr. Schively made in the city of Spokane about the standing of your company while he was there?

A. No.

Q. Do you know about the examinations or any conversations with your policyholders while he was there?

A. No.

Q. All you know is what transpired in the office?

A. Yes.

Q. And the first thing that occurred in the office was that the president came in with Schively and told you to draw a check to Schively for \$100.00?

A. I didn't say that. My testimony is not that at all.

Q. Well, that is all the personal knowledge you have of what occurred that day?

A. No sir, it is not.

Q. Were you with Mr. Schively any other time in the day?

A. I wasn't.

Q. You say that you did not see Mr. Schively anywhere else that day?

A. No.

Q. And you weren't with anybody that Schively was with that day except in this office at that time?

A. I am only testifying as to what I heard Mr. Schively and Mr. Farnsworth talk about, and what Mr. Schively and I talked about in the conversation we had.

Q. That is exactly what I have been trying to get you to tell a long time ago. I asked you to give us generally what the conversation was between Farnsworth and Schively after they came into the office, and you said that you had no recollection except that he told you to draw a check, and general matters.

A. I didn't tell you anything of the kind.

Q. What did you tell me?

A. My testimony shows what I testified to.

Q. Well, don't you think it would be more expeditious for you to repeat it?

A. The conversation hinged on the amount of money we should pay Mr. Schively. He said the customary charge was \$200.00, and our president got him down to \$100.00, and he asked me to draw a check for the \$100.00 in favor of Mr. Schively, and I did.

Q. Where did this conversation occur, in your private office or in the office of the company?

A. It was all in the same office.

Q. It was all one and the same room?

A. Yes.

Q. Now, we have all that occurred between Schively and Farnsworth in your presence, have we?

A. Practically all pertaining to business. The rest was of a social character.

Q. Then I am right in my deduction that you don't know what

Farnsworth and Schively did at any time before they came into the office?

A. That is right.

Q. And I am also right in my deduction that you don't know what Schively did in connection with your company or any other company, or any investigation of it outside of your office?

A. That is right.

Q. Now, you say that Mr. Schively and Mr. Ligget came to the office.

A. Yes.

Q. You were at that time seeking entrance for your company in the State of Idaho?

A. Yes.

Q. Mr. Ligget was insurance commissioner for the State of Idaho?

A. Yes.

Q. He was there for the purpose of examining your company as to its standing and solvency and securities prior to admitting it into the State of Idaho?

A. Yes.

Q. Your president, Mr. Farnsworth, had asked Mr. Schively to be present when Ligget was there to help your company to make a showing, and inspect your certificate, so that they would be satisfactory to Ligget?

A. That is about right.

Q. Mr. Schively was there for that purpose?

A. I don't know whether Mr. Schively was there for that purpose or whether they just happened to be there together on the same day, or how.

Q. Well, it don't make any difference how Schively got into Spokane; Schively was in Spokane?

A. Yes.

Q. And the company did want his good offices with the commissioner of the State of Idaho to get you into Idaho?

A. That is right.

Q. And you understood that he was an expert on these matters?

A. Yes.

Q. And he could show your company up to the best advantage it could be shown under the law?

A. Yes.

Q. And you wanted the benefit of that?

A. That is right.

Q. From Mr. Schively?

A. Yes.

Q. J. H. Schively?

A. Yes.

Q. Didn't make any difference who he was?

A. That is right.

Q. Now let me see the receipt, check to Ligget.

[Witness hands instrument to counsel.]

Q. Now, I would like, Mr. Lichty, to have you detach this check—take it out of the book—so that it may be put in evidence.

A. I don't like to do it. I gave the receiver of this company a receipt for these two books, and I am supposed to return it as it is.

Q. Well, we will put a copy of it in the record; the stub is No. 1088, October 9, 1906, and the "9" and "1906" are in figures; to E. E.

Ligget, marked in figures, \$300.00. The check reads number 1088, The Old National Bank, Spokane, Washington, October 9, 1906; Pay to the order of E. E. Ligget three hundred dollars and no cents, and signed Farmers' Mutual Livestock Ins. Company. J. S. Lichty, Treas. It is indorsed George Farnsworth, E. E. Ligget and E. L. Ligget. Now, who was the E. E. Ligget? He was the Idaho bank commissioner, wasn't he?

A. The Idaho commissioner of insurance.

Q. And E. L. Ligget was home?

A. I don't know who E. L. Ligget is.

Q. And how did the check come to get into the possession of Farnsworth?

A. Mr. Farnsworth indorsed it as identification.

Q. First?

A. Yes.

Q. He was the first indorser?

A. He identified these people.

Q. You will notice that if you look at the back of the check, both the Ligget indorsements are above the Farnsworth indorsement?

A. Yes.

Q. Did you see Farnsworth indorse it?

A. The indorsing was done in the office, as a matter of identification, so they could get it cashed at the bank.

Q. Who indorsed it first?

A. Ligget indorsed it first.

By MR. ISRAEL: That again shows the necessity of us having this check.

Q. Was it from the ink off of your desk that it was indorsed at your desk?

A. It was indorsed right there at our office. I don't know whether it was at my desk or Mr. Farnsworth's desk. It was done in the office.

Q. Were the words "E. E. Ligget" and "E. L. Ligget" both put on there before Farnsworth indorsed it?

A. I don't know. That E. L. Ligget is a new one to me. I don't know who he is.

Q. Now, is it not a fact that Mr. Farnsworth indorsed it in the office and handed it to Mr. Ligget and Mr. Ligget didn't indorse it until afterwards?

A. That might be, because I would not swear to that.

Q. Let me direct your attention to the indorsements of E. E. Ligget and E. L. Ligget. The two names are written with the same pen and in the same handwriting and the same ink?

A. Looks like it.

By MR. ISRAEL: I would like to have the senators look at this. It will become important bye and bye. I want to show that the signature of Farnsworth is apparently the last indorsement; that the signature of the two Ligget's is in the same handwriting, written with the same ink and with the same pen. The truth is often discovered by very small things, and I desire to have this honorable court notice that the signature is in the same handwriting, the same pen and the same ink.

By SENATOR PRESBY: I will ask that in a matter of such importance the original check be left here, to be here in the trial of this case.



BY THE PRESIDING OFFICER: The witness has agreed to leave the check here until after the trial, with the understanding that we will later return it. It will be introduced in evidence.

BY MR. ISRAEL: Now, Mr. Lichty, do you know Miss Mell Lindsay? say?

A. I know of her.

Q. Is she a stenographer?

A. I know of her.

Q. Did she ever work in this office?

A. She worked for the company at one time, but not during this time.

Q. When did she work for the company?

A. She was employed by the company after this first check was paid to Mr. Schively.

Q. How long afterwards?

A. Oh, she worked for the company only a short time.

Q. How long was it after the first check was paid to Mr. Schively that she first was employed by the company?

A. She was employed by the company just about a month—about the month of September.

Q. How long did she work for the company then?

A. Just about a month.

Q. And then how long was she out of the employment of the company before she came back into the company?

A. She never returned.

Q. Did she work for your president?

A. She did not.

Q. Did she work for any one in the company's office?

A. She did not.

Q. What work was she engaged in while she was working for the company? What were her duties?

A. I think she entered insurance policies on the record and did some bookkeeping.

Q. Did you have any other stenographer in the office after Mr. Schively's first visit—any stenographer who worked for the company besides Miss Mell Lindsay?

A. After Mr. Schively's first visit?

Q. Yes?

A. Yes.

Q. Who was she?

A. I think it was Miss Nelson.

Q. How long did she work for the company?

A. Well, she worked along after this Miss Lindsay.

Q. For how long a time?

A. Well, possibly two months.

Q. Did she work for your president, besides working for the company at any time?

A. No sir. She was employed by the company.

Q. Only?

A. Only.

Q. Did any other stenographer work for the company?

A. No, sir; I do not think so.

Q. Did any other stenographer work in the company's office room for your president?

A. Do you mean afterwards, or at any time?

Q. Yes.

A. Yes, we had one afterwards.

Q. Who was she?

A. My daughter.

Q. Did your president have a stenographer at any time?

A. Not the president individually; no, sir.

Q. Was there any other stenographer working in the office outside of this company's stenographer?

A. No, sir.

Q. Or before this? Did all of these stenographers make the entries in the policy register?

A. Yes, I think they all had more or less to do with it.

Q. Now, where is that policy register?

A. It is in the hands of the receiver.

Q. Who is the receiver?

A. Mr. St. Morris.

Q. What is his baptismal name, or what is his first name?

BY THE WITNESS [*Addressing Mr. Edge*]: What is his name?

BY MR. MANAGER EDGE: Charles.

Q. Where does he reside?

A. Spokane.

Q. Where has he this policy register?

A. In the Hyde block.

Q. Do you know that practically all, if not all, of the entries in that policy register, in the month of June, 1906, were in a woman's handwriting?

A. No, sir; I could not swear to that.

Q. Will you say that they are not?

BY MR. MANAGER EDGE: If the court please, I believe that this is extending too far.

A. No.

BY MR. MANAGER EDGE: Just a moment. Counsel wants to know what the handwriting is in a certain policy book back in Spokane during certain months. That has absolutely nothing to do with what this witness testified in chief. I do not know whether this is for the purpose of testing his credibility or not. It is certainly immaterial. If counsel can be permitted to go ahead on certain immaterial and irrelevant matter throughout this trial with all of the witnesses, this trial will go on to an interminable length, and we may as well eliminate this immaterial matter.

BY THE PRESIDING OFFICER: The court will allow the attorney for the respondent to proceed, with the request that he confine himself to material matters only as well as he can. We are allowing a great deal of latitude in these examinations.

BY MR. ISRAEL: Q. Now, are you prepared to say that practically all, if not all, of the entries that show in that book, in that policy register, for that period are in the handwriting of a woman?

A. What year?

Q. June, 1906.

A. I am not prepared to swear to that point.

Q. Will you produce that register here at this court?

A. I have nothing to do with that register.

Q. You got to those books you have there [*indicating*]. Can you not get the register in the same way?

A. I suppose I could.

Q. Will you produce that?

A. I will, if I am required.

By MR. ISRAEL: Will the managers request the witness to produce this book.

By MR. LEE: I do not think we should be called upon to make any request of that nature.

By THE PRESIDING OFFICER: It was in the power of the attorney for the respondent to have had that book here, if he wanted it.

By MR. LEE: Does the president rule that the book cannot be brought here, unless it is shown that it is of some relevancy, or unless the proper request was made? The board of managers feel that if in any way it will assist counsel upon a material matter they will grant the request.

By MR. ISRAEL: I will state to you that I deem it a very material matter to this cause to know who was present in this company's room at the time that the witness pretended to testify as to what occurred.

By MR. MANAGER EDGE: In what way could that be determined by showing the witness a book, in somebody else's possession?

By MR. ISRAEL: I propose to impeach this witness; to show that there were other people present in the room and heard the conversation that occurred there, and which has been detailed by the witness and did not occur as he testifies, and that at that time he had a stenographer, and that the stenographer kept his policy records. That is what I propose to show in connection with this witness. It is going to be quite material, I deem it, in the eyes of this board of managers, that this Senate believe the testimony of this witness. Now, for the purpose of testing his credibility, if he had a stenographer there and if the stenographer kept his policy register at the time, and the witness testified that he had no stenographer there and that he kept it himself, that is what I want to show. Now, I simply requested that the young gentleman instruct this witness to obtain these books. Simply say me nay, and I will ask the president *pro tempore* for subpoena *duces te cum* for this receiver to come here to Olympia and bring that book, so that he will be here when I want him. I could avoid the subpoena *duces te cum* and the consequent extra clerical work and expense if you will grant the producing of the book.

By MR. LEE: This is cross-examination, and we are not going to ask of a man any request like that. If counsel wants this witness, let him subpoena.

By THE PRESIDING OFFICER: The incident is closed; proceed.

BY MR. ISRAEL: Q. Did you have a typewriter in your office, or a machine, in June, 1906?

A. Yes.

Q. Did either you or Mr. Farnsworth operate it?

A. I operated it.

Q. You did the typewriting yourself?

A. Yes.

Q. Did you do all of the office corresponding of Mr. Farnsworth, or did he do some of it?

A. Everything that was written on the typewriter I did.

Q. Did you do general office corresponding or did Mr. Farnsworth do any of it? Did Mr. Farnsworth dictate the letters to you and you did the typewriting?

A. Yes, sometimes.

Q. And you wrote the letters on the typewriter for him?

A. Yes.

Q. And he would afterwards sign them?

A. Yes.

Q. I believe that is all.

[Witness excused.]

BY MR. ISRAEL: I would like to ask from the presiding officer that the president *pro tempore* issue a subpoena *duces te cum* for Charles St. Morris, of Spokane (to come and bring with him the policy register, ledger and cash book of the Farmers' Mutual Live Stock Insurance Company, as well as the check books—canceled checks of the same company for the months of May and June, 1906), and ask, at this time, that the subpoena *duces te cum* be placed in the hands of the proper person for serving it.

BY THE PRESIDING OFFICER: That will be referred to the president.

BY MR. ISRAEL: Yes, that is why I made it through you.

BY THE PRESIDENT: The subpoena will be issued.

BY MR. LEE: Article No. 20 of the articles of impeachment, upon which we now expect to introduce proof, reads as follows:

#### ARTICLE 20.

That on April 16th, 1907, said J. H. Schively, as deputy insurance commissioner, examined the books and records of the Walla Walla Fire Insurance Company, of Walla Walla, Washington; that subsequently, and on July 29th, 1907, an official examination was made of the same company; that in each case said Schively demanded of and received from said company the arbitrary sum of two hundred dollars for making such examinations, which sums were greatly in excess of his expenses incurred in said examinations; that in neither case did the said Schively present to the said company any itemized or detailed statement of expenses incurred in making said examinations, or either of them, as by law he was required to do.

Wherefore, the said J. H. Schively, as deputy insurance commissioner, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety and malfeasance in office.

Mr. O. E. Parker, a witness produced on behalf of the complainants, being first duly sworn, testified as follows:

*Direct examination—*

BY MR. LEE: Q. State your official connection, if any, with the Walla Walla Fire Insurance Company in 1907.

A. I was treasurer.

Q. Were you treasurer during the entire year?

A. I think I was—yes.

Q. State whether or not J. H. Schively, as deputy insurance commissioner, came to your company's headquarters in Walla Walla on or about April 16th, 1907, to examine the books of the company?

A. Yes, some time near that.

Q. Now, Mr. Parker, state to the Senate in your own language what transpired there; what examination if any, was made; what time was consumed, what was said and done, and what check, if any, was issued for same, and just in your own way, as loud as you can, detail to the Senate all of the transaction.

A. Well, the president sent for Mr. Schively to examine the company, so that we could enter in some of the states. He came over and made an examination. He was in town about a day, I believe—between trains, I think it was. I do not know how many hours he spent with us, but I think it was possibly three and it may have been longer—perhaps not that long.

Q. Who do you mean by "we"?

A. The president and secretary and myself.

Q. Was there an examination of the company made at that time, if you know?

A. Yes; there was.

Q. Extending over what period of time, approximately?

A. I believe it was possibly about three hours. I do not remember the exact time.

Q. Now, state to the Senate what, if anything, was said about the compensation for the examination?

A. Mr. Schively said that his regular charge was two hundred dollars for examination—that is, every examination that he made, he made the usual charge of two hundred dollars.

Q. State what, if anything else, was done and said at the time that this statement was made.

A. That is all I remember of at that time.

Q. State whether or not you, or any official of the company in your presence, paid the amount asked or made any objection to that amount?

A. No, not at that time.

Q. Or at any other time?

A. Well, while I was in Seattle I met Mr. Schively. He said that his regular charge was two hundred dollars, but since we were all there together—that is, since he and I were there together—that if he did not have to make a trip to Walla Walla, why, it would just be his official charge for entrance fees, which, I think, was about thirty-five dollars.

Q. This you are now detailing is with reference to another transaction in Seattle?

A. Yes. That was upon the organization of the company.

Q. You understand, we are now concerned with what occurred in Walla Walla, on or about the 12th of June, 1906. Tell the Senate what,

if anything else, happened at that time in regard to the compensation that Mr. Schively said was the usual amount.

A. Mr. Holloway, who was president of the company, told me to sign a check for the two hundred dollars. I did so.

Q. Have you the original check book there with you?

A. I have the original check book here with me, yes.

Q. What became of those checks, if anything, after they were canceled and returned to the company?

A. Just after we went into the hands of the receiver, there was a great many things disposed of, and where they went I do not know.

Q. You have never seen the canceled checks since then?

A. No.

Q. State whether or not you drew a check for two hundred dollars, payable to the order of John H. Schively, on that date, the 12th of June, 1906?

A. No, sir; April 18th was the first two-hundred-dollar check.

Q. That was payable to whom?

A. To J. H. Schively.

Q. At that time did Mr. Schively present any detailed statement of expenses in regard to the examination to you?

A. Not that I know of. No, not to me.

Q. Do you know whether or not he presented any detailed statement to the president of the company?

A. No, sir; I do not know that he did, but I think that if he did the president would have said something about it.

Q. Do you know whether or not this check for two hundred dollars was drawn to comply with his general request that that was a flat examination fee, or to comply with the detailed statement of expenses?

BY MR. ISRAEL: I want to state to the court that that is very leading, and objectionable upon that ground.

BY THE PRESIDING OFFICER: We might as well allow a little latitude on these questions. It will save time.

BY MR. ISRAEL: I realize that, but this is going pretty far.

[*Question read.*]

A. This was a regular charge.

Q. He said that to you, did he, at that time?

A. I do not remember whether he said that at that time or not. He had previously; that was his regular charge.

Q. Previously what?

A. That was upon the organization of the company. He told me about the \$200.00, so we knew what we had to pay when he came over.

Q. State to the Senate what your expenses are from, or were from, Walla Walla to Olympia and return, assuming you spent a few days in Walla Walla?

A. Oh, \$35 I think would cover it.

Q. State whether or not there was a subsequent examination of the affairs of that company made by Mr. Schively on or about July 29th, 1907?

BY MR. ISRAEL: In what article is that?

BY MR. LEE: The last portion or the middle portion of article 20.

BY MR. ISRAEL: [*Examining article*] Oh, yes, I see; very well.

[*Question read.*]

A. Yes, about July 29th he made another examination at our request—that is, at the president's request, rather.

Q. That is, three or four months subsequent to the first examination in April, 1907?

A. That was July, after the April examination, yes.

Q. State what time, if any, was consumed in the examination which occurred in July, 1907, if you remember.

A. What is that?

Q. State how much time Mr. Schively took or consumed in the examination of that company in July, 1907.

A. I do not know.

Q. Can you approximate it?

A. I was not in the office at the time.

Q. State whether or not any compensation was paid to him, if you know?

A. Yes, I signed a check for \$200.00, and I left it behind.

Q. State to the Senate the circumstances under which you signed the second two-hundred-dollar check, payable to Mr. Schively.

A. Mr. Holloway had called Mr. Schively to make an examination of the company, so that we would be prepared to enter New York.

Q. Well, state what happened, if anything, after that call by Mr. Holloway.

A. Well, that was all that I know of on that second occasion.

Q. Well, did you issue this check upon that call of Mr. Holloway?

A. I signed the blank check and left it with Mr. Holloway to give to Mr. Schively.

Q. Do you know whether or not any statement of expenses was presented on the subsequent date, namely, on July 29, 1907?

A. No, I do not.

Q. If there had been, would you have known about it?

A. I think I would.

Q. Were the books of this company in your possession?

A. Yes, sir.

Q. Were they in your possession on these two dates?

A. They were.

Q. Now, in regard to the second item of two hundred dollars, state to the Senate approximately what your expenses are or were from Walla Walla to Olympia and return, assuming that you would spend two days in Walla Walla?

A. That would, including sleeper, be eleven dollars and ninety cents; that is for one way.

Q. What would you approximate the total expense, as you did in the other case?

A. Well, about thirty-five dollars, I think would cover it for me.

*Cross-examination.*

BY MR. ISRAEL: Q. When did your company go into the hands of a receiver?

A. I think it was—well, some time in the last of December, 1908.

Q. December, 1908?

A. Yes.

Q. What position did I understand you occupied with the company?

A. Treasurer.

Q. What other officers did the company have?

A. A president and secretary.

Q. President and the secretary and treasurer?

A. And a treasurer.

Q. And who was the president?

A. C. K. Holloway.

Q. And where is he now?

A. I think he is down in Oakland, California.

Q. And who was the secretary?

A. C. H. Spencer was at that time.

Q. And where is he now?

A. I think he is in Seattle.

Q. Now, where was your company's office in April, 1907, in Walla Walla; where were you located?

A. In the Ransome building.

Q. How many rooms did that cover?

A. A large general office, and the treasurer and secretary were in another room and the president had a room of his own.

Q. There was a large general office, a smaller private office, in which was yourself and the secretary?

A. Yes.

Q. At least was used by yourself and secretary?

A. Yes.

Q. And still another private office that was used by the president?

A. Yes.

Q. And there were other employes, I presume, in the main office?

A. Oh, yes.

Q. And the president and secretary and treasurer had employes in their office as well?

A. No. Yes, the president, I believe—I forget whether he had a stenographer in there or not, or whether he called one in when he wanted to.

Q. Now, if I understand you rightly, you made application to enter the Walla Walla Fire Insurance Company as a fire insurance company in the State of Washington to Mr. Schively at Seattle?

A. Yes.

Q. And at that time he informed you that the entrance fee was \$35.00 and you paid him that amount of money?

A. A check was sent to him for that amount of money.

Q. There was no request or requirement made from him then for any advance examination fee.

A. No.

Q. Now, then, later, about April 12th.—Well, first your company conformed to the law of the state as it then existed by furnishing the insurance commissioner's office with a copy of your articles of incorporation and the name of your officers and the amount of your assets, and that you had complied with the various laws of the United States, and your unimpaired capital—all the things required, you had furnished—that was at the time you were admitted for the \$35.00?

A. All that Mr. Schively wanted to know he knew at that time.

Q. Now then, he did not go to Walla Walla until he was requested by your president to come there and examine your company in April?

A. That is it.

Q. He came to Walla Walla at the request of your president—not upon his own motion?

A. At the request of the president.

Q. Now, at that time your company wanted to enter some foreign jurisdiction, didn't it?

A. Yes.



Q. What state was it you wanted to go into, Mr. Parker, at the time you sent for the insurance commissioner, do you remember?

A. I don't remember exactly. New York was one that we wanted to.

Q. That, I understand you to say, was the second time he came over.

A. Well, both times.

Q. Did your insurance company, at the time your president sent for Mr. Schively to come to Walla Walla with the idea of examining your company and finding if you were in condition to go into a foreign state—into New York—did you have a general counsel or attorney?

A. Attorney for the company, you mean?

Q. Yes, sir.

A. We had an attorney there, yes.

Q. The company had an attorney in Walla Walla?

A. Yes.

Q. To whom it went for advice in all matters, did it not?

A. I believe so, yes.

Q. Now, it was necessary, in the estimation of your president, that you have the advice of Mr. Schively as to the condition of your company before you ventured trying to go to New York, wasn't it?

A. No, sir, it was the different states that required Mr. Schively's signature to the statements that were sent them.

Q. The different states required a certificate of examination by your insurance commissioner?

A. Yes.

Q. And you wanted Mr. Schively to come over and make your examination, so you could have such a certificate?

A. Yes.

Q. Now then, at this time you were in the treasurer's office?

A. Yes, sir.

Q. And your president, whose name was what?

A. C. K. Holloway.

Q. And through him the request was made of Mr. Schively to come to Walla Walla?

A. Yes.

Q. Now, you saw Mr. Schively in and about the office for how long?

A. I would not say the exact time, but I think it was possibly two or three hours, or maybe longer.

Q. Now, during that day, Mr. Parker, were you with Mr. Schively all the time?

A. I was not right with him. I was on the other side of the desk. The two desks were back to back.

Q. During that time was Mr. Schively at any part of the time with the president in his room?

A. I don't know whether he was or not.

Q. Don't remember?

A. No.

Q. Were the president and Mr. Schively out of the building and about town without your being with them during the day?

A. Oh, yes, I think so.

Q. Was there any conversation or consultation between the president and Mr. Schively at any time during the day that you were not a party to, that you were not present?

A. Well, I suppose there was, but I don't—

Q. Undoubtedly was. You and Mr. Schively had an automobile ride that day?

A. Yes.

Q. And the president had him out when you were not with him during the day?

A. Well, the president was with me at that time, I believe. I am not positive; I think so.

BY THE PRESIDING OFFICER: I fail to see the materiality of all this. I am trying to allow a very reasonable latitude.

Q. At that time you were showing Mr. Schively the properties of the company?

A. Yes, and the city generally.

Q. Did you see Mr. Schively after he left the office.

A. I think we took him right after we left the office.

Q. I mean did you see him any more about Walla Walla?

A. No.

Q. Did you know when he left Walla Walla finally?

A. I did not see him leave, but he said he was going to leave that night.

Q. The second coming of Mr. Schively was at the request of your president?

A. Yes.

Q. And at that time you were discussing going into New York?

A. Who?

Q. Your company.

A. Yes.

Q. And you were away at the time this examination was made?

A. Yes.

Q. All you know is that you left a check for two hundred dollars to pay for it.

A. No, I left a blank check.

Q. A blank check filled in for two hundred dollars.

A. Yes.

Q. You did not fill in the amount?

A. No.

Q. You left that for the president?

A. Yes.

Q. You don't know that either at the time of the first or the second examination—or you don't know first to what extent the second examination went, because you were not there?

A. I was not there.

Q. And you don't know whether Mr. Schively furnished your president, Mr. Holloway, at either one of those times with any statement of any kind?

A. I don't think so. Mr. Holloway did not say anything about it.

Q. I will grant you that. You don't think he did, but you don't know of your own knowledge.

A. No; I think that if he had, it would have been handed over to me.

Q. Very likely; very likely; but you don't know as a matter of fact that he did not leave a memorandum at any time?

A. No, I don't know it positively, although I never saw any.

Q. Neither do you know, nor do you pretend to say, Mr. Parker, as to whether Mr. Holloway, in invitng Mr. Schively over there, got from

him information as an evidence regarding conditions and affairs and resources of companies for the purpose of doing business in foreign jurisdictions, or sought any advice from him outside of his office as insurance commissioner.

A. That was all he was sent for at that time, was to examine our books.

Q. But you are not prepared to say to what extent he was used by your president while he was there?

A. No.

[*Witness excused.*]

By MR. LEE: It will take but a few moments to get the evidence of Mr. Dorsey M. Hill, who is the receiver of this company.

By THE PRESIDING OFFICER: You have got twelve minutes yet.

By MR. LEE: That will be ample time.

By THE PRESIDING OFFICER: These witnesses that have testified, do counsel for either side want them kept in attendance, or are they excused for good?

By MR. LEE: Unless Mr. Israel objects.

By MR. ISRAEL: I don't know that I will need them, your honor, but I would not like to say that I would not want them.

By THE PRESIDING OFFICER: How soon can you determine?

By MR. ISRAEL: When we get a little further into this matter, probably tomorrow morning.

By THE PRESIDING OFFICER: Very well, they are excused until tomorrow morning.

By MR. ISRAEL: The court will appreciate that there is no chance for consultation at this time as to whether we will need them or not.

Dorsey M. Hill, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

*Direct examination—*

By MR. LEE: Q. State your name to the stenographer.

A. Dorsey M. Hall.

Q. And your residence.

A. Walla Walla, Washington.

Q. What connection, if any, have you had in the past with the Walla Walla Fire Insurance Company?

A. I was appointed receiver on January 12th, 1909.

Q. State whether or not as such receiver the books of the company, or the purported books, came into your possession.

A. They are all in my possession, having come in there some time since.

Q. From whom did you receive the books?

A. From the treasurer and from the secretary.

Q. Mr. Parker, treasurer?

A. Mr. Parker and Mr. Conaway.

Q. Those books in your possession now?

A. They are.

Q. Do those books include the stubs of the check books?

A. They do. That is the book Mr. Parker had on the stand [*referring to the book on the table*].

Q. State whether or not that is the book that came into your possession as the check book or the stubs of the check book of the company.

A. It did.

Q. State whether or not, Mr. Hill, that book shows two checks paid to Mr. Schively in April and July, 1907, and if so, what for?

A. On April 18th, 1907, there is a check for two hundred dollars made out to J. H. Schively; fees and taxes.

BY MR. ISRAEL: When you speak of a check, do you mean a check or a stub?

BY THE WITNESS: He asked me what the stub showed?

BY MR. ISRAEL: Well, he used the word "check" and so did you.

BY THE WITNESS: Well, there is a check stub in the check book as of April 18, to J. H. Schively, \$200, for fees and taxes.

BY MR. LEE: How about July, 1907?

A. There is a stub, No. 339, for \$200 on July 29, 1907, to order of J. H. Schively.

Q. State what you know became of the books.

A. The books, in my opinion, were destroyed in Seattle. There was a temporary receiver appointed and I was made permanent receiver about ten days afterwards, and I have never been able to find a check, and I understand they were destroyed in Seattle.

Q. To your knowledge, Mr. Hill, you don't know about the examination of the property.

A. I know nothing about the examination except what the check book and the cash book show.

Q. Have you the cash book with you?

A. I have.

Q. Examine the cash book and state to the Senate what that shows relative to these two items.

A. The cash book, at page 13, shows an item on April 16, J. H. Schively, examination, for two hundred dollars. That is the first one. The second one is on July 29th, page 51, J. H. Schively—no notation for what it was for—\$200.00.

Q. So that the one shows for examination fee and the other no notation?

A. Yes.

Q. That cash book came into your hands as the original cash book of the company?

A. It did.

Q. You received it from the same office, did you?

A. I received it from the company.

Q. Now state, Mr. Hill, what your actual expenses were, approximately, incurred in the trip from Walla Walla to Olympia, assuming that you would be either two days in Olympia or say two days in Walla Walla, reversing the case either way.

A. Thirty or thirty-five dollars. Thirty-five dollars would be ample.

Q. State whether that would actually cover your actual traveling expenses.

A. It would.

Q. How many days' time would that consume?

A. Oh, a couple of days in Olympia.

Q. And if you should consume three days' time in Olympia, or Walla Walla, state what.

A. Oh, that would be three or four dollars extra, according to the kind of hotel you went to.

*Cross-examination—*

BY MR. ISRAEL: Q. You are the receiver of the Walla Walla Fire Insurance Company?

A. I am.

Q. Closing up its affairs now?

A. Yes, sir.

Q. You will pardon me, but I understood the counsel who made the opening statement to say that he would show that the affairs of your company were in a bad shape. Is it not true that you have issued a circular that your receivership will pay all its indebtedness, dollar for dollar?

A. No, I have issued no circular. I have written several letters, if you will allow me to explain the question—

Q. Yes.

A. Stating that if the assets of the company, which were under question in court, were held good by the court, the company would pay dollar for dollar. If they were not, practically nothing would be paid. No circular has been sent out to that effect, though.

Q. The first stub that you have there of a check reads "fees and taxes"?

A. Yes, sir.

[*Witness excused.*]

BY MR. MANAGER MEIGS: Now, unless there is some special reason for detaining this witness, we would like to have him excused tonight, Mr. Israel.

BY MR. LEE: He came down from the mountains and left his family.

BY MR. MANAGER MEIGS: It will mean a delay of two days, if he is detained tonight.

BY MR. ISRAEL: Where did you come from?

BY THE WITNESS: From Walla Walla—from up in the mountains near Walla Walla.

BY MR. ISRAEL: I cannot conceive of needing the witness, and I will simply do this with you: I will agree to let the witness go with the understanding if it becomes absolutely necessary I will send for him to come back before the case is finally closed.

BY MR. LEE: Yes.

BY THE PRESIDING OFFICER: Mr. Dorsey Hall will be excused. All other witnesses will report tomorrow morning at 9:30. Anything further?

BY MR. LEE: Nothing else, Mr. President, tonight.

At 4:45 p. m. the Senate, sitting as a court of impeachment, adjourned until tomorrow morning at 9:30 a. m.

SENATE CHAMBER,  
OLYMPIA, WASH., August 17, 1909.

The Senate, sitting as a court of impeachment, convened at  
9:30 a. m.

BY THE PRESIDENT: Senator Knickerbocker will take the chair.

BY THE PRESIDING OFFICER: Mr. Israel, have you yet determined upon behalf of the respondent whether or not the witnesses sworn yesterday may be excused?

BY MR. ISRAEL: They may be, so far as respondent is concerned.

BY THE PRESIDING OFFICER: The witnesses who testified before this court yesterday may be excused.

BY MR. LEE: Mr. President, at this time and before introducing proof on other articles, on behalf of the board of managers, I desire to offer as corroborative evidence of articles 3 and 4, which were before the Senate yesterday, the depositions of eight or ten men, identified with eight or ten other companies, for the primary purpose of showing the absence of mistake or inadvertance on the part of Mr. Schively; for the further reason to show a scheme or a system that had been in operation for the past year or two covering the same offenses identically set forth in articles 3 and 4. Now, counsel for the respondent being, as we all admit, an eminent criminal lawyer, is familiar with the rules of criminal law, and I take this as a criminal case as an illustration only, in order to show that if it is applicable in a criminal case, it certainly is applicable in an impeachment case. Counsel well knows, and the lawyers of this body know, that in a criminal prosecution for all cases of robbery, extortion, embezzlement, etc., ordinarily it is not permissible to show the commission of an independent and distinct crime in order to show the guilt or innocence of the man in the particular case under prosecution. But there is a well-defined exception, universally established by the courts of this Union and set down by the common law, and it is to this effect, especially in embezzlement: When a man is under prosecution for embezzlement, and the state assumes to prove, extending over a long length of time, that the man who committed a series of embezzlements which shows a system or scheme on his part, that evidence is not only admissible, but is the best evidence that can be introduced. I challenge your attention to articles 3 and 4, which allege that the deputy insurance commissioner charged a certain amount of money for verification of reports. In that connection I call your attention to almost every other article of impeachment, which was to the effect that he did almost exactly the same thing. It is not made for the purpose of showing a distinct and independent offense, but for the purpose of corroboration; for the purpose of showing a crime and a system; for the purpose of showing it as not done accidentally, inadvertently, or that he was mistaken; for the purpose of showing knowledge on the part of Mr. Schively when, as is charged in articles 3 and 4, he made

these demands. With these three or four preliminary explanations, let me challenge the court's attention to a few authorities, and bear in mind if this rule is applicable in a criminal case, how much more it ought to be applicable in an impeachment case. As you have already learned, the rules of criminal law do not obtain in all their strictness. Now, before citing an authority or two in point, allow me to challenge the attention of this body to the expediency of this rule. If it becomes necessary to reintroduce new articles, and counsel is given time, if he is to answer, it means that it would delay the time of this Senate, and will consume the time on the same provisions we offer here in corroboration, and we do not offer these things merely from a point of view of expediency, but because they are admissible, and I am simply challenging your attention to the expediency end of it because I know the senators are interested in that, for were we to submit amended articles it would be the same proof we offer in support of articles 3 and 4. Now, the supreme court of the State of Washington, (32nd Wash., on page 140), in an able opinion by Judge Dunbar, has this to say (I may say that this case of the State vs. Pittam was an embezzlement case). The prosecution was for a specific criminal offense, namely, embezzlement. An offer was made by the state to show that other acts had been committed within the prior year or two years preceding the offense alleged in the information. Judge Dunbar, writing the opinion for the supreme court in this case, has not been overruled, as an investigation shows, and he says as follows:

It is a well-established rule that it is not competent to show the commission by the defendant of other distinct crimes for the purpose of proving that he is guilty of the crime charged; but for the purpose of construing the actions or of ascertaining the intent of the defendant in the commission of the acts proven other independent culpable acts are sometimes admissible in evidence. In this case, for instance, the defendant admitted having received \$150, which he is charged with embezzling, the circumstances being that he took to the bank for deposit a check in favor of the corporation for \$343.19, informing the teller that he desired \$150 of the amount in cash, the remainder to be placed to the credit of the corporation, but he disclaimed any intent to wrongfully appropriate the said amount of \$150. We think it was competent to show that, in the general scheme he adopted in keeping his accounts with his employers, the result was the appropriation by him of the funds of the employers; not for the purpose of prejudicing a jury against him by proving the commission of independent crimes, but to throw light on his intentions in the perpetration of the particular transaction, constituting the crime charged.

So also here we offer these depositions regarding similar transactions, not to show Mr. Schively guilty or innocent as to articles 3 and 4, but to show a scheme and system and absolute absence of a mistake or inadvertance and a knowledge of the acts which he did, and which we charge in articles 3 and 4 he was guilty of the crime of extortion. Judge Dunbar cites an expert opinion from Wharton on Criminal Evidence, which I will not take the time to read, which is exactly in line with the decision of Judge Dunbar, and we think the evidence we are about to introduce is competent.

Now, it is an elementary principle of law, counsel must admit, and I won't consume the time of this Senate with the citation of an additional case, and this case comes so near being in point, Mr. President and gentlemen of the Senate. It was a case that went up to the Texas court of appeals, and the facts were these: (This is the 27th Texas Appeals, 528). A county officer was charged with the crime of extortion. Theretofore he had been cited for another and distinct offense for the crime of extortion. On the trial of his subsequent case for extortion the state attempted to prove and was permitted to introduce the prior indictment for extortion, which was an independent and distinct offense, and had absolutely no connection with the subsequent offense. The Texas court in its opinion says:

For the purpose of tending to show a knowledge on the part of the defendant that the evidence admitted by the trial court was not lawful, the indictment put in evidence by the state over defendant's objection was, we think, admissible testimony.

That case is exactly in point here, gentlemen. In this case we contend that this evidence is admissible and competent, not to show his guilt or innocence of this other offense, but to show that he had a knowledge at the time he extorted, or as he is alleged to have extorted in articles 3 and 4—in other words, to show that he had a guilty knowledge because he pursued the same scheme or the same system for a year or two. We propose in corroboration of those articles to introduce this testimony.

BY MR. ISRAEL: Give me a list of them, please.

BY MR. LEE: Depositions on article 5, which charges the same offense; article 6, article 7, article 8, article 9, article 10, article 11, article 12, article 13, article 15, and article 16.

BY THE PRESIDING OFFICER: Mr. Lee, I would suggest that you formally offer one of those depositions in evidence, and if it is not objected to it will be received.

BY MR. LEE: That would be perhaps the expeditious way of getting at it. I offer the deposition of Mr. Pierce, connected with the Colorado National Life Insurance Company, of Denver, Colorado.

BY MR. ISRAEL: Now, if your honor please, I object to this introduction, and I do not object to it. I object to it if it is for any other purpose than the law allows. I have no quarrel or objection to it if it is introduced in a conceded case that the law permits such testimony. While I lay no claim to the flattering statement of the young gentleman that I am an eminent criminal lawyer, or eminent in any respect, I heartily agree with him in his statement that I do know something about the criminal law, and it is so elementary that it seems to me that counsel has wasted his time in making his lengthy argument and in making his remarks as to my knowledge, because if counsel believe his statement as to my knowledge of the law, he would know that I knew that any testimony of other transactions of a similar character with those under the investigation is only permissible when it becomes necessary to show an intent for the purpose of com-



pleting the crime, and never at any other time. Your honor knows, without my citing the law, that larceny cannot be proven by the proof of any other independent larceny, because the taking and carrying away—the asportation—is the crime, and the law imports the intent; but in any crime charged that must stand or fall by a determination of the guilty intent—with which it was done—such testimony is admissible, your honor. If the act done was not done with an unlawful intent, and could be so justified, then the testimony of similar acts could be introduced for the purpose of negating the idea that the prisoner did not act with a lawful purpose only for the purpose of showing other acts that would lead up to the belief that he held the criminal intent to do the wrong when he did the act. Now then, so it is, and I say that I object to this testimony, and I yet do not object to it. It is the first time in this case that we have even an intimation from the other side that it was necessary, in order to convict John Schively of extortion, to prove his unlawful intent. On the contrary, the contention has been here from the beginning that the act itself constituted extortion and that the intent could not be heard to excuse it; that it was no justification to say that he did these things under coercion, under order or request or demand, but was enough to say that he did. Now, if that be the law, and if that be what the board of managers will contend for in the final end of this case, then this testimony is not admissible. It has no relevancy, because no number of acts would add anything to the guilt of the act proven, and it would be a mere subterfuge to attempt to prove that by testimony, and would be attempting to prove a man guilty of one crime by proving another; but if it is admitted that Schively cannot be convicted under those counts without it is proven that he did have, he did accept, this money with a guilty intent, then this testimony is admissible, and I am willing and glad to have it and invite it, because it is in direct line with the position that I have always occupied in this case, and will occupy to the last end, that this belongs to a class of cases in which it is not only necessary to prove the act, but it is necessary to prove the guilty intent with which the act was done. That is my law in this case; one of the defenses in this case to have it accepted by the other side, is to invite the introduction of other testimony, because I do not conceive any harm from it; but I want to serve notice now that I do not want your honor to admit this testimony if it is subsequently going to be held in this case that it is not necessary to prove an unlawful intent. That is the distinction that your books make, and you cannot read the law otherwise; and if it be now admitted that it is necessary to establish in this class of alleged offenses the guilty intent of Schively, I have no objection to the testimony; but if it be for the purpose of subterfuge, to get in testimony which otherwise could not be gotten in, and to afterwards take the position before this Senate as the judges that it does not make any difference what his intent was, then your honor should not admit the testimony. I think I make myself clear. The first case read from

Washington is squarely in point. I am familiar with this decision. Now, in this case there was an indictment for embezzlement. The information charged him with willfully, unlawfully, feloniously, and fraudently converting to his own use the money and property intrusted to him by the McCormick Harvesting Machine Company, a corporation, while he was acting as agent for said company. From the books of the agent it was proposed to show in the acts his general scheme of booking, whereby he made short charges to other people, for the purpose of showing the intent with which he committed the act, that he was being tried for the taking of the particular money, he was being tried for the purpose of establishing the intent. Judge Dunbar only stated that elementary proposition when he said, "It is a well established rule that it is not competent to show the commission by the defendant of other distinct crimes for the purpose of proving that he is guilty of the crime charged."

Now that is elementary, and if this testimony is for that purpose, if this testimony is for the purpose of in any wise attempting to prove that he is guilty as to articles 3 and 4, it would be admitted; otherwise it is absolutely incompetent and immaterial. What Judge Dunbar says is: "If it is for the purpose of construing or ascertaining the intent of the defendant in the commission of the act proven, other independent culpable acts are sometimes admissible in evidence." I do not quarrel with the decisions of our own supreme court, and that is directly in line with this case; but that which bothered me up until now was that the contention of the pleadings, the contention of the opening argument of counsel, the contention all the way through, that all they need to show is the act itself, and the law implies the intent. If that is all they have to show the testimony is not admissible, and I object to it; but if they do have to show intent, which I claim they do have to show, then it is admissible, and I am willing to let it go for what it is worth. But I want to make myself plain upon the proposition. There should not be any somersaulting here to this court by arguing that they do not have to show guilty intent.

By MR. LEE: There won't be any somersaulting, but there has been considerable mental gymnastics. No doubt counsel would be pleased to force this board of managers into the corner he has been trying to throughout the entire progress of this trial—that they have to show criminal intent. We claim only that when Schively took these fees in the name of the state, he was guilty of extortion, no less than any other individual. There is no exception to this rule. Counsel has told you of one exception. Now, I will call your attention to another, which he has refused to allude to. We don't want to introduce this deposition, and we don't offer to prove, to show by this, that there was an intent upon the part of this defendant. We simply wish to show that he took these fees, demanded these fees.

I would solicit your attention to another case which leaves it clear that this evidence is competent and admissible. In the case of the

State vs. Brady, a decision of the supreme court of the State of Iowa, by Judge Deemer—

By MR. ISRAEL: What is that?

By MR. LEE: It is the 69th Northwestern Reporter, page 290. This question was raised whether or not in a criminal prosecution, a prosecution for each similar and distinct and independent offense should be interposed. Of course, it was objected to, but it went in over the objection of the counsel for defendant, in the lower court, and it was affirmed in the supreme court. Judge Deemer in discussing this point has this to say—and now, in view of counsel's elaborate effort to urge the one single exception to the criminal law in this connection, I will call attention to the following paragraph: "The court permitted the state to introduce in evidence all the claims filed with the auditor by the defendant for transportation claimed to have been furnished by him to four persons during the year 1893, and down to the 12th day of January, 1894. It also permitted the state to introduce the records of the Chicago, Milwaukee & St. Paul railroad, the Wabash railroad"—and other railroads which I will not read here. "The admission of this evidence is complained of. It is said in argument that it is not competent for the state to give in evidence facts tending to prove other distinct offenses, for the purpose of raising an inference that the defendant has committed the crime in question. That such is a general rule must be conceded."

But to this rule there are at least two well-defined exceptions, which are well stated by Justice Stevens, in his work on evidence, as follows: "When there is a question whether a person said or did something, the fact that he said or did something of the same sort on a different occasion may be proved, if it shows the existence on the occasion in question of any intention, knowledge, good or bad faith, malice, or other state of mind, or of any state of body, or bodily feeling, the existence of which is in issue or is deemed to be relevant to the issue; but such acts or words may not be proved merely in order to show that the person so acting or speaking was likely on the occasion in question to act in a similar manner."

Let us notice the second exception: "*Facts Showing System.* When there is a question whether an act is accidental or intentional, the fact that such act formed a part of a series of similar occurrences, in each of which the person doing the act was concerned, is deemed to be relevant. The first of these exceptions we have frequently recognized and applied to cases of this character." (Cites a long list of Iowa cases). "The evidence we have referred to is clearly admissible under the first of these exceptions stated above, for the purpose of showing the knowledge, intention and bad faith of the defendant. It seems to us that the evidence was also admissible for the purpose of proving a systematic scheme or plan on the part of the defendant to cheat and defraud the county, thus negating the idea that the presentation of the claim in question was accidental, or through oversight or mistake."

Upon the second exception, Mr. President and gentlemen of the Senate, we offer this proof, not to show a guilty intention—we don't care about that; the law presumes that according to our contention the extortive acts were committed—but we offer it to show the bad faith, the scheme to defraud the insurance companies, that certainly negating the idea of the defense which may be interposed later that there was a mistake or inadvertence; and we say that these are, therefore, competent to show a system and a scheme on the part of this man so long as this proof is reasonably connected in point of time with the articles 3 and 4.

BY MR. ISRAEL: It is a little out of order, I think, that a gentleman should have the opening and closing of a legal argument to argue and to cite legal phases on his closing argument that he did not argue on the opening.

BY MR. LEE: Simply in answer.

BY MR. ISRAEL: If it is answer, I would ask the privilege of calling attention to Judge Dunbar's proposition—

BY MR. LEE: If Mr. Israel takes the floor again in this argument, I want the right to answer.

BY THE PRESIDING OFFICER: You will have that privilege.

BY MR. ISRAEL: This is the language of Judge Dunbar, and probably I did not read it distinctly enough for opposing counsel to understand, but it is very plain:

It is a well established rule that it is not competent to show the commission by the defendant of other distinct crimes for the purpose of proving that he is guilty of the crime charged; but for the purpose of construing the actions or ascertaining the intent of the defendant in the commission of the acts proven, other independent culpable acts are sometimes admissible in evidence.

Now, I do not dispute that law. I do not dispute the case of the State vs. Brady, where the evidence was sought for the purpose of establishing intent on the part of the defendant on trial. "System and scheme" of his—mark you—and I will contend against the admission of this testimony, if it is to be subsequently argued that no intent need be proven against the defendant to convict him. Now, this word "intent" covers a scheme and action; scheme and action is intent, and that has been my defense all of the time. If this defendant stands acquitted, if he was neither guilty of criminal intent or scheme and action of his own, I am content—that is the very position I propose to take in this case and occupy at all times; but I don't want to step beyond this threshold until I have nailed these shifty gentlemen down to their position. The moment they confess that the taking of this money, whether it was legal or illegal, can be tested by the question of whose scheme it was, of whose system it was, or whose plan it was, or whose policy it was, John Schively stands acquitted. The moment they state that John Schively cannot be convicted without guilty intent, and that guilty intent is measured by the acts and systems, orders and policies of superiors, John Schively stands acquitted. But let us now under-

stand that the law says this testimony shall not be admitted without it is in a case where there is necessary guilt and system—that is, where it is necessary to prove guilt and system on the part of the defendant—unlawful system on the part of the defendant or guilty intent. When we understand that to be the law under which we are to proceed—and when we concede that John Schively has committed no crime, without he took the money with guilty intent, or without he took the money under his own policy and his own system and his own manner of conducting the office, independent of any superior—when we understand that is the law that must convict this man, the testimony should be admitted, and he will be acquitted; but if we are to follow what has been the policy of these attorneys and these managers up to this time—that it is not necessary to prove anything but the bare act—then under all of the books and under the elementary principles of the law the testimony is not admissible. So I say to your honor, I object to this testimony, without it be conceded by the court that before John Schively is convicted the prosecutor must show a guilty intent upon his part, or an intent and scheme—of an independent scheme of his own to extract illegal moneys from people. They are not entitled to both. When we understand that is the answer, that those are the necessary elements to be proven by this defense, let the testimony in.

By MR. LEE: We are willing to submit this to the Senate on the argument and on the authorities that have been presented here.

By THE PRESIDING OFFICER: The question which is here presented for decision by the chair, or by the Senate, as the case may be, is rather a novel question. The general rule is well established in the courts of this state that in a criminal trial evidence cannot be introduced to show that the defendant on trial has committed one crime in an effort to convince a jury that he committed the crime for which he is then on trial. The objection raised by counsel for respondent is the qualified objection. If the counsel for respondent had objected, without the qualification attached to his objection, the chair would have felt like sustaining his objection. Before announcing the decision of the chair upon this question, I desire to call specific attention of the senators to, I think, rule 18, which provides that nine senators may require a decision on points of this kind to be decided by the vote of the Senate. If such a request is not made, the chair will state—

By SENATOR METCALF: It seems like a very vital matter, and I would appeal to rule 18, and move that this matter be discussed under rule 18.

By SENATOR PAULHAMUS: I second the motion.

By SENATOR COTTERILL: I think that the rules plainly contemplate a ruling by the chair, and then if it is desired it can be submitted to the body. This is not a decision upon a demurrer. It is one of those questions that come up on points of evidence. The rule plainly states there shall be first a ruling of the presiding officer, and then upon the call of one-fifth of the senators it may be submitted to the Senate.

BY THE PRESIDING OFFICER: I think, Senator Cotterill, you have read the rule wrong. My construction of that rule would be that from the decision of the chair there can be no appeal if the chair was inclined to be technical. However, the Senate would have the inherent right to appeal from the decision of the chair. It has been regularly moved and seconded—

BY SENATOR PRESBY: I think nine senators should rise. It is not a question of a majority of the Senate—

BY SENATOR METCALF: I am perfectly willing to refer this to a decision of the chair, when it is entirely upon a question of law, and I will withdraw my motion with the consent of my second.

BY SENATOR PAULHAMUS: Certainly.

BY THE PRESIDING OFFICER: The motion is withdrawn. Will nine senators arise?

BY SENATOR COTTERILL: I believe that is contrary to the reading of this rule 18. If I may be permitted to read the first sentence of rule 18—

All interlocutory orders and decisions shall be made by the presiding officer, but upon demand of one-fifth of the Senate, any such interlocutory order or decision shall be submitted to the house and decided by a vote taken upon yeas and nays.

I infer from that rule that we would plainly have the right to have first the decision of the presiding officer; then, if it is desired, one-fifth of the members may ask that that decision be submitted to the house and decided. I simply call attention to that in view of the statements which were in answer to my point of order, so that we may have a precedent in future cases.

BY SENATOR ROSENHAUPT: I would like to call the attention of the chair to the fact that the system as advocated by Senator Cotterill has been the system that we have followed heretofore.

BY THE PRESIDING OFFICER: That is true.

BY SENATOR ROSENHAUPT: Both with reference to Senator Knickerbocker and myself in the chair.

BY THE PRESIDING OFFICER: That is true. The chair would desire to state, however, or to read the following sentence:

The decision shall be entered upon the record, whether made by the presiding officer or the house, and the record shall also show whether the question is decided by the presiding officer or by the house.

Continuing, this court is sitting somewhat as, or is somewhat in the position of, a court of equity. Each senator is in a way a judge, also a juror. In equity cases, where there is no jury, evidence is often admitted which is not admitted in criminal cases or civil cases, in which there are juries. In view of the fact that the objection of counsel for respondent is a qualified objection, the objection will be overruled.

BY MR. ISRAEL: Now, if your honor please, simply for the purpose of saving the record and saving the ruling, before this matter goes into the body of the house, under the indications your honor has made for the

reasons of the ruling, I now object generally to the introduction of this testimony.

BY THE PRESIDING OFFICER: Objection overruled.

BY MR. LEE: Mr. President, I offer the deposition of Mr. Pierce, connected with the Colorado National Life Assurance Company, of Denver, Colorado.

BY THE SECRETARY: Deposition of R. E. Pierce.—

(1) Q. State your name and residence.

A. Ralph E. Pierce, 15 East Third avenue, Denver, Colorado.

(2) Q. State your connection, if any, with the Colorado National Life Assurance Company, of Denver, Colorado, in February, 1907.

A. I was a clerk of the company at date mentioned; have been connected with the company at all times since said date; have been assistant secretary since July, 1907.

(3) Q. State if you know whether or not J. H. Schively, as deputy insurance commissioner of the State of Washington, in February, 1907, made any representation to your company concerning the fees necessary for entrance to the State of Washington, and if so, how were such representations made?

A. Yes. He made certain representations to the company by letter dated February 4, 1907.

BY SENATOR FALCONER: I would like to ask what particular article this deposition refers to.

BY MR. MANAGER MEIGS: Articles 3 and 4.

(4) Q. If your answer is in the affirmative, and that the representations were made by letter, state whether or not the purported letter signed by J. H. Schively, as deputy insurance commissioner, marked Exhibit "A" and attached hereto, is the original letter received by your company containing such representations.

A. It is.

(5) Q. Did the Colorado National Life Assurance Company, subsequent to the date of said letter, enter the State of Washington, and if so, what fees were paid for said entrance?

A. Yes, it did. It paid \$35.00 admission fee and \$200.00 for verification of securities.

(6) Q. If you answer the foregoing questions in the affirmative, did you receive the receipts and vouchers from J. H. Schively for entrance fees paid?

A. Yes.

(7) Q. If you answer the foregoing question in the affirmative, state whether or not the purported receipts and vouchers signed by J. H. Schively, as deputy insurance commissioner, marked Exhibits "B" and "C" and attached hereto, are the original receipts and vouchers so received?

A. They are.

(8) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, on February 4, 1907, or at any time subsequent thereto, made an examination of the books, records or securities of the Colorado National Life Assurance Company, would you know of such examination having been made?

A. Yes, I would.

(9) Q. If your answer to the foregoing question is in the affirmative, state whether or not such examination was ever made?

A. No.

(10) Q. If your answer to the foregoing question is in the affirmative, state whether or not a detail statement of the expenses of such examination was ever presented to your company?

A. No.

(11) Q. If you have answered that the Colorado National Life Assurance Company entered the State of Washington subsequent to February, 1907, and received a certificate of authority to do business in said state, state whether or not the purported letter signed by J. H. Schively, as deputy insurance commissioner, marked Exhibit "D" and attached hereto, is the original letter received by you accompanying said certificate of authority?

A. Yes, it is.

RALPH E. PIERCE.

Subscribed and sworn to before Thomas R. Woodrow, notary public.

#### EXHIBIT "A."

STATE OF WASHINGTON, OFFICE OF DEPARTMENT OF INSURANCE.

OLYMPIA, February 4, 1907.

*H. L. Sears, Secretary, Colorado National Life Assurance Co., Denver, Colo.*

DEAR SIR: In accordance with your request of January 28th, I am sending you under separate cover all blanks necessary to be filled out in seeking admission to the transaction of business in this state, together with copy of our insurance laws. The entrance fees are \$235.00—\$35 statutory fees and \$200 for the verification of your securities and first report, all payable in advance.

Very truly yours,

J. H. SCHIVELY,

*Deputy Insurance Commissioner.*

Received Feb. 12, 1907, Colo. Nat'l. Life.

#### EXHIBIT "B."

INSURANCE DEPARTMENT, STATE OF WASHINGTON.

\$45.00

OLYMPIA, Mch. 14, 1907.

Received from Colorado National Life Assr. Co., forty-five dollars, in full for entrance fees \$35.00, two licenses \$10.

J. H. SCHIVELY,

No. 78.

*Deputy Insurance Commissioner. F.*

#### EXHIBIT "B."

THE COLORADO NATIONAL LIFE ASSURANCE CO., OF DENVER, COLO.

*Cash Voucher.*

Sam. H. Nichols, Sec'y of State, Washington.

Mar. 6, 1907, admission fee including certificate of authority, \$35.00.

Approved for payment, H. L. S.

Entered, R. J. FLEINKER.

Mar. 14, 1907.

Received of the Colorado National Life Insurance Co., thirty-five dollars, being in full settlement of above account.

J. H. SCHIVELY,

*Deputy Insurance Commissioner.*

#### EXHIBIT "C."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,

\$200.00.

OLYMPIA, Mch. 14, 1907.

Received from Colorado National Life Assur. Co., two hundred dollars, in full of verifying report.

J. H. SCHIVELY,

No. 3,008.

*Deputy Insurance Commissioner.*



THE COLORADO NATIONAL LIFE ASSURANCE CO., OF DENVER, COLO.

*Cash Voucher.*

Sam. H. Nichols, Sec'y of State, Washington.

Mar. 8, 1907, to verification of company's securities and first report.  
\$200.00

Approved for payment, H. L. F.

Entered, T. J. FLEISCHER,  
Mar. 14, 1907.

Received of the Colorado National Life Assurance Co., two hundred and no-100 dollars, being in full settlement of above account.

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

EXHIBIT "D."

OFFICE DEPARTMENT OF INSURANCE,  
OLYMPIA, March 14, 1907.

*H. L. Sears, Secretary, Colorado National Life Assurance Co., Denver, Colo.*

DEAR SIR: Herewith please find your certificate of authority as under current date, together with vouchers covering your several checks. The two licenses have been forwarded direct to your agents. I bid you welcome to the State of Washington and wish you every success. It will give me pleasure to advance your interests in whatever way I can that may be consistent with an impartial administration of this department.

Very truly yours,

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

Received March 18, 1907. Colo. Nat'l. Life.

BY MR. LEE: I offer in evidence the deposition of Mr. Fairbanks, who is identified with the Commonwealth Insurance Company, of New York. In regard to this deposition, gentlemen, it is self-explanatory, and I have no remarks to make upon it.

BY MR. ISRAEL: I make the same modified objection to the introduction of this testimony. I agree to its admission upon the theory that it is necessary in this cause to prove the guilty intent, or self-created scheme, under the decision of the 32nd Washington, to make it competent, and that otherwise it would be incompetent for any purpose.

BY THE PRESIDING OFFICER: Same ruling. Objection overruled.

BY MR. MANAGER MEIGS: For the convenience of the senators, I may say that this deposition goes to the facts contained in article 6, the deposition just read having gone to the facts stated in article 5. This, of course, is understood that it is not to prove these various articles.

BY THE PRESIDING OFFICER: Mr. Meigs, let the chair understand: All the depositions which you are now offering in evidence are depositions which were taken to support charges which have been at least temporarily withdrawn.

BY MR. ISRAEL: They are not now offered, your honor, for the purpose of proving any of them.

BY THE PRESIDING OFFICER: They are confined to articles 3 and 4.

BY MR. ISRAEL: Yes.

BY THE SECRETARY: Deposition of E. G. Richards.—

(1) Q. State your name and residence.

A. Ellis G. Richards, Waldorf-Astoria Hotel, New York City.

(2) Q. State what connection, if any, you had with the Commonwealth Insurance Company, of New York, in August, 1907?

A. I was president.

(3) Q. State whether or not the Commonwealth Insurance Company, of New York, was admitted to do business in the State of Washington on or before August 16th, 1907?

A. It was admitted August 15th, 1907.

(4) Q. If you answer the foregoing question in the affirmative, state if you know what fees were paid for entrance to said state?

A. One hundred (\$100.00) dollars for verification of annual statement; thirty-five (\$35.00) dollars for entrance fee, and two (\$2.00) dollars for license fee.

(5) Q. If you answer that the Commonwealth Insurance Company, of New York, entered the State of Washington in August, 1907, and paid entrance fees therefor, state whether you received from J. H. Schively as deputy insurance commissioner a receipt for such fee?

A. We did.

(6) Q. If you answer the foregoing question in the affirmative, state whether or not the purported receipt, signed by J. H. Schively, marked Exhibit "A" and attached hereto, is the original receipt received by your company?

A. It is.

(7) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, in August, 1907, or at any date subsequent thereto, made an examination of the books, records or securities of the Commonwealth Insurance Company, of New York, would you know of such examination having been made?

A. Yes.

(8) Q. If you answer the foregoing question in the affirmative, state whether or not such examination was ever made?

A. No.

ELLIS G. RICHARDS.

Subscribed and sworn to before Francis E. J. Reid, notary public in and for the State of New York.

#### EXHIBIT "A."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
OLYMPIA, August 16, 1907.

Received from Commonwealth Ins. Co., of N. Y., one hundred, thirty-seven and 00-100 dollars—amount of entrance fees, \$35.00; verifying report, \$100.00; 1 license, \$2.00.

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

Paid by check No. 20,241, Aug. 22, 1907, Commonwealth Ins. Co., of N. Y.

BY MR. LEE: I offer the deposition of L. M. Fairbanks, who is identified with the Illinois National Fire Insurance Company, of Springfield. I might say that this deposition is in connection with article 8. The senators understand it is not to prove article 8, but has reference to articles 3 and 4.

BY MR. ISRAEL: I make the same modified objection.

BY THE PRESIDING OFFICER: Objection overruled.

By THE SECRETARY: Deposition of L. M. Fairbanks—

(1) Q. State your name and residence.

A. Loriston M. Fairbanks, 130 North Edward street, Decatur, Illinois.

(2) Q. What connection, if any, did you have with the Illinois National Fire Insurance Company, of Springfield, in March, 1908?

A. I was secretary at that time.

(3) Q. State whether or not, if you know J. H. Schively as deputy insurance commissioner in 1908 made any representations to said company concerning fees necessary for entrance to the State of Washington, and if so, how were such representations made?

A. He did. By letter.

(4) Q. If you answer the foregoing question in the affirmative, and that such representations were made by letter, state whether or not the purported letter, signed by J. H. Schively, as deputy insurance commissioner, marked Exhibit "A" and attached hereto, is the original letter received by the Illinois National Fire Insurance Company, of Springfield, containing such representations?

A. The said Exhibit "A" is the original.

(5) Q. Did the National Fire Insurance Company, of Springfield, subsequent to March 10th, 1908, enter the State of Washington, and if so, what fees were paid for such entrance?

A. It did. \$237.00. This answer applies to the Illinois National Fire Insurance Company, of Springfield, Illinois.

(6) Q. If you answer that the National Fire Insurance Company, of Springfield, subsequent to March 10th, 1908, paid a fee for entrance to the State of Washington, state whether or not said company received a receipt for said payment from J. H. Schively, as deputy insurance commissioner.

A. It did—that is, the Illinois National Fire Insurance Company, of Springfield, Illinois.

(7) Q. If you answer the foregoing question in the affirmative, state whether or not the purported receipt, signed by J. H. Schively, as deputy insurance commissioner, marked Exhibit "B" and attached hereto, is the original receipt so received.

A. The said Exhibit "B" is the original.

(8) Q. If you answer that you received a receipt from J. H. Schively for entrance fees paid, state whether or not the purported letter, signed by J. H. Schively, as deputy insurance commissioner, marked Exhibit "C" and attached hereto, is the original letter accompanying said receipt when received by you.

A. The said Exhibit "C" is the original letter.

(9) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, at any time subsequent to March 10th, 1908, made an examination of the books, records and securities of the Illinois National Fire Insurance Company, of Springfield, would you know of such examination having been made?

A. I would know if such examination had been made. No such examination was made.

(10) Q. If you answer the foregoing question in the affirmative, state whether or not a detailed statement of the expenses of such examination was ever presented to your company.

A. No detailed statement of such expenses was ever presented to my company.

LORISTON M. FAIRBANKS.

Subscribed and sworn to before Samuel W. Gilbert, notary public in and for the State of Illinois.

## EXHIBIT "A."

THE STATE OF WASHINGTON, DEPARTMENT OF INSURANCE,  
OLYMPIA, March 6, 1908.

*Illinois National Fire Ins. Co., Springfield, Ill.*

GENTLEMEN: Mr. Edward C. Arnold, of Spokane, forwarded your papers recently, but owing to the absence of a certified copy of your articles of incorporation, the papers were held for a day or so. The articles were subsequently forwarded by Mr. Arnold, and, in accordance with my wire to you, your certificate was issued under date of March 5. I take pleasure in enclosing the same to you and wishing you every success in this state. Mr. Arnold instructed me to issue a sight draft upon you for the required amount of fees. I therefore issued draft in the sum of \$237.00 through the Capital National Bank of this city and will forward you voucher for the same upon hearing from you or from the bank to the effect that the draft has been duly received and honored. This \$237.00 covers the following points: Statutory entrance fee, \$35.00; verification of company's securities and report, \$200.00; license for Mr. Arnold, \$2.00. This cost for verification being once borne is not duplicated.

Very truly yours,

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

Received March 10, 1908. *Illinois National Fire Insurance Company.*

## EXHIBIT "B."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
OLYMPIA, March 19, 1908.

\$237.00

Received from *Illinois National Fire Ins. Co.*, two hundred and thirty-seven no-100 dollars in full of amount of entrance fee \$35.00, 1 license \$2.00, verifying report \$200.00.

No. 1666. J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

## EXHIBIT "C."

STATE OF WASHINGTON, DEPARTMENT OF STATE, INSURANCE DEPARTMENT,  
OLYMPIA, March 18, 1908.

*L. M. Fairbanks, Secretary, Illinois National Fire Ins. Co., Springfield, Ill.*

DEAR SIR: I beg to acknowledge receipt of yours of March 10th, for which I thank you. I herewith enclose voucher covering your draft in the sum of \$237.00.

Very truly yours,

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

Received March 23, 1908. *Illinois National Fire Insurance Company.*

By MR. LEE: Mr. President, on this same matter we desire to introduce the deposition of Mr. Canning, identified with the Jefferson Fire Insurance Company, of Philadelphia. I will explain to the Senate that this is on the information contained in article 8, but not to prove article 8, because that is not before the Senate.

By MR. ISRAEL: Same modified objection to the purpose of introduction.

By THE PRESIDING OFFICER: Same ruling: objection overruled.

BY THE SECRETARY: Deposition of James M. Canning.

(1) Q. State your name and residence?

A. James M. Canning, 4035 Green street, Philadelphia.

(2) Q. What connection, if any, did you have with the Jefferson Fire Insurance Company, of Philadelphia, Pennsylvania, in December, 1906?

A. Auditor of the Jefferson Insurance Company, Philadelphia.

(3) Q. State if you know whether or not the Jefferson Fire Insurance Company, of Philadelphia, entered the State of Washington in December, 1906?

A. Yes, they did.

(4) Q. If you answer the foregoing question in the affirmative, state what, if any, fees were paid for entrance to said state?

A. \$35 entrance fee and \$100.00 for verifying report—December 6th, 1906.

(5) Q. If you answer that the Jefferson Fire Insurance Company of Philadelphia, Pennsylvania, entered the State of Washington in December, 1906, and paid fees therefor, state whether or not said company received receipts from J. H. Schively, as deputy insurance commissioner, for the entrance fees paid?

A. Yes.

(6) Q. If you answer the foregoing question in the affirmative, state whether or not the purported receipts, signed by J. H. Schively, as deputy insurance commissioner, marked Exhibits "A" and "B" and attached hereto, are the original receipts received by said company?

A. Yes; I identified receipts by notation made by me.

(7) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, at any time subsequent to December 6, 1906, made an examination of the books, records or securities of the Jefferson Fire Insurance Company, of Philadelphia, Pennsylvania, would you know of such examination having been made?

A. I would know.

(8) Q. If you answer the foregoing question in the affirmative, state whether or not such examination was ever made?

A. No examination was ever made.

(9) Q. If you answer the foregoing question in the affirmative, state whether or not a detailed statement of the expenses of such examination was ever presented to the Jefferson Fire Insurance Company of Philadelphia, Pennsylvania?

A. No.

JAMES M. CANNING.

Subscribed and sworn to before Thomas J. Sherman, notary public in and for the State of Pennsylvania.

#### EXHIBIT "A."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
OLYMPIA, Dec. 6, 1906.

\$35.00

Received from Jefferson Fire Ins. Co., thirty-five no-100 dollars, account of entrance fees.

No. 2448.

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

## EXHIBIT "B."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
OLYMPIA, Dec. 6, 1906.

\$100.00

Received from Jefferson Fire Ins. Co., one hundred no-100 dollars,  
account of verifying report.

J. H. SCHIVELY,

No. 2978.

*Deputy Insurance Commissioner.*

BY MR. LEE: Mr. President, I offer the deposition of Mr. Dowling, connected with the Massachusetts Bonding & Insurance Company. The subject-matter of this is found in article 9, formerly in the articles.

BY MR. ISRAEL: Same modified objection.

BY THE PRESIDING OFFICER: Objection overruled.

BY THE SECRETARY: Deposition of William H. Dowling—

(1) Q. State your name and residence.

A. William H. Dowling, residence Brookline, Mass.

(2) Q. State what connection, if any, you had with the Massachusetts Bonding & Insurance Company in January, 1908?

A. I was assistant treasurer.

(3) Q. State, if you know, whether or not the Massachusetts Bonding & Insurance Company was entered to do business in the State of Washington in January, 1908?

A. Yes, we were.

(4) Q. If you answer the foregoing question in the affirmative, state, if you know, what fees were paid for said entrance?

A. Two hundred dollars for verification of report, thirty-five dollars for entrance fee, and five dollars for one license—two hundred and forty dollars in all.

(6) Q. If you answer that the Massachusetts Bonding & Insurance Company entered the State of Washington in January, 1908, and paid entrance fees for such entrance, state, if you know, whether or not said company received any receipts from J. H. Schively, as deputy insurance commissioner, for said payment?

A. Yes, we did. We received vouchers Nos. 1190 and 3144, both dated January 22, 1908. These payments were made by C. F. Neal, our Washington agent.

(6) Q. If you answer the foregoing question in the affirmative, state, if you know, whether or not the purported receipts signed by J. H. Schively as deputy insurance commissioner, marked as Exhibits "A" and "B," respectively, and attached hereto, are the original receipts received by the Massachusetts Bonding & Insurance Company for said entrance fees?

A. So far as I know, they are the original receipts. They are the only ones we received.

(7) Q. If you answer that the Massachusetts Bonding & Insurance Company entered the State of Washington in January, 1908, state whether or not said company appointed a local agent in said state, and if so, state the name of the said agent?

A. We did; Charles F. Neal, Seattle, Washington.

(8) Q. If J. H. Schively, as deputy insurance commissioner of the State of Washington, or any other representative of the insurance department of the State of Washington, at any time subsequent to January 22, 1908, made an examination of the books, records or securities of the Massachusetts Bonding & Insurance Company, would you know of such examination having been made?

A. I would.

(9) Q. If you answer the foregoing question in the affirmative, state whether or not any such examination was ever made?

A. None was ever made.

(10) Q. If you answer the foregoing question in the affirmative, state, if you know, whether or not a detailed statement of the expenses of such examination was ever presented to the Massachusetts Bonding & Insurance Company?

A. The preceding answer covers this question.

WILLIAM H. DOWLING.

Subscribed and sworn to before Fisher Ames, notary public in and for the State of Massachusetts.

#### EXHIBIT "A."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
OLYMPIA, Jan. 22, 1908.

\$200.00

Received from Massachusetts Bonding & Ins. Co., two hundred no-100 dollars, account of verification of report.

No. 3144. J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

#### EXHIBIT "B."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
OLYMPIA, Jan. 22, 1908.

\$40.00

Received from Mass. Bonding & Ins. Co., forty no-100 dollars, account of entrance fees \$35.00, 1 license \$5.00.

No. 1190. J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

BY THE SECRETARY: Deposition of Robert G. Haseldine—

(1) Q. State your name and residence.

A. Robert G. Hazeldine, Cynwyd, Pa.

(2) Q. What connection, if any, did you have with the Philadelphia Casualty Company in May and June, 1908?

A. Secretary of Philadelphia Casualty Company.

(3) Q. State, if you know, whether or not the Philadelphia Casualty Company was entered to do business in the State of Washington in May or June, 1908?

A. Yes; just about that time—May, 1908.

(3) Q. If you answer the foregoing question in the affirmative, state, if you know what fees, if any, were paid for entrance to the State of Washington?

A. \$35.00 statutory entrance fees and \$200 verification of the company's first report.

(4) Q. If you answer that the Philadelphia Casualty Company paid entrance fees to the State of Washington in May or June, 1908, state, if you know, whether or not said company received a receipt for such payment?

A. Yes.

(5) Q. If you answer the foregoing question in the affirmative, state whether or not the purported receipt, signed by J. H. Schively, as deputy insurance commissioner, marked Exhibit "A" and attached hereto, is the original receipt received by the Philadelphia Casualty Company for said entrance payment?

A. Yes; I identify receipt.

(6) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, at any time subsequent to May 20, 1908, made an exami-

nation of the books, records or securities of the Philadelphia Casualty Company, would you know of such examination having been made?

A. I would know.

(7) Q. If you answer the foregoing question in the affirmative, state whether or not such examination was ever made?

A. No examination was ever made. ROBT. G. HAZELDINE.

Subscribed and sworn to before Thomas J. Sherman, notary public in and for the State of Pennsylvania.

#### EXHIBIT "A."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
OLYMPIA, June 1, 1908.

\$235 no-100

Received from Philadelphia Cas. Co., two hundred and thirty-five no-100 dollars, account of entrance fees \$35.00, verifying report \$200.

J. H. SCHIVELY,  
No. 204. Deputy Insurance Commissioner.

BY MR. LEE: I offer the deposition of Mr. C. C. Bowen, of the Seaboard & Marine Insurance Company, of Galveston, Texas.

BY MR. ISRAEL: That is subject to the same admission and yet modified objection.

BY THE PRESIDING OFFICER: Objection overruled.

BY THE SECRETARY: Deposition of C. C. Bowen—

(1) Q. State your name and residence.

A. My name is C. C. Bowen; residence, Galveston, Texas.

(2) Q. State your connection, if any, with the Seaboard & Marine Insurance Company, of Galveston, Texas.

A. My connection with Seaboard & Marine Insurance Company is that of assistant secretary and chief underwriting executive.

(3) Q. State, if you know, whether or not said company was entered to do business in the State of Washington on or about January 1, 1907?

A. Said company was entered to do business in the State of Washington on or about January 1st, 1907.

(4) Q. If you answer the foregoing question in the affirmative, state, if you know, what fees were paid by said company for entrance to said state?

A. As to fees paid for entry, cannot answer definitely. Details and facts can be secured through Mr. F. A. Chapuis, Nos. 511 and 513 Merchants' Exchange, San Francisco.

(5) Q. State, if you know, whether or not the Seaboard Fire & Marine Insurance Company, of Galveston, Texas, received a receipt for the payment of such fees?

A. Receipt received by Mr. Chapuis for any and all amounts paid to insurance department of the State of Washington for account of this company.

(6) Q. If you answer the foregoing question in the affirmative, state, if you know, whether or not the purported receipt signed by J. H. Schively, as deputy insurance commissioner, marked Exhibit "A" and attached hereto, is the original receipt so received for the payment of said fees?

A. Cannot answer whether or not all receipts were signed by J. H. Schively. Exhibit "A," hereto attached, seems to be receipt for entrance fees paid by this company for the completion of its application for a permit to transact business in Washington. Said exhibit filed



with this company as voucher and charged to Pacific Coast department account.

(7) Q. State whether or not at the time of the admission of the Seaboard Fire & Marine Insurance Company, of Galveston, Texas, to do business in the State of Washington, it had an agent in the city of San Francisco, California, and if so, state his name?

A. Yes; Mr. W. H. Breeding, who was succeeded by Mr. F. A. Chapuis, as general agent. Either of these parties, under the terms of their contract with this company, were authorized to apply for and complete entry of said company to said state.

(8) Q. If you answer that said company had such an agent, state whether or not said agent was authorized to enter the Seaboard Fire & Marine Insurance Company in the State of Washington?

A. Papers were filed either by W. H. Breeding or F. A. Chapuis, who succeeded Mr. Breeding as general agent. Either of these parties, under the terms of their contract with this company, was authorized to apply for and complete entry of said company to said state.

(9) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, made an examination of the books, records or securities of the Seaboard Fire & Marine Insurance Company on or subsequent to January 1, 1907, would you know of such examination having been made?

A. No representative or party claiming to represent the insurance department of Washington called upon this office or made any examination of the books, records or entries of this company on or subsequent to January 1, 1907. I would have known if such examination had been made, as I have immediate charge of the operations of this company.

(10) Q. If you answer the foregoing question in the affirmative, state whether or not such an examination was ever made?

A. As referred to in previous question and answer, no examination was ever made by any official of the Washington department.

(11) Q. If you answer the foregoing question in the affirmative, state whether or not an itemized statement of the expenses of such examination was ever presented to the Seaboard Fire & Marine Insurance Company, of Galveston, Texas?

A. No expense or fee was ever paid by this company in payment of examination charges.

C. C. BOWEN,

Subscribed and sworn to before Esther Stein, notary public in and for the State of Texas.

#### EXHIBIT "A."

INSURANCE DEPARTMENT, STATE OF WASHINGTON,  
OLYMPIA, Jan. 1, 1907.

\$135.00

Received from Seaboard F. & M. Ins. Co., one hundred and thirty-five no-100 dollars, account of verifying report \$100.00, entrance fees \$35.00.

J. H. SCHIVELY,  
Deputy Insurance Commissioner.  
No. 2475. Original.  
Received Jan. 8, 1907. W. H. Breeding.

BY MR. LEE: Mr. President, there are only two or three more, and I think we might just grind them out now.

BY THE PRESIDING OFFICER: How is that, Mr. Lee?

By MR. LEE: There are only two or three more. We might just as well go ahead and introduce them.

By MR. ISRAEL: Offer all three of them and let the same objection be entered on the record.

By THE PRESIDING OFFICER: The court will take a recess for ten minutes.

By MR. LEE: I offer in evidence the depositions of Mr. Lloyd, Mr. Dobbin, Mr. Baker and Mr. Overton.

By MR. ISRAEL: We have the same modified objection.

By THE PRESIDING OFFICER: The objection is overruled.

By THE SECRETARY: Deposition of Robert A. Dobbin, Jr.—

(1) Q. State your name and residence.

A. Robert A. Dobbin, Jr., Mt. Washington, Baltimore, County, Maryland.

(2) Q. State your connection, if any, with the United Surety Company, of Baltimore, Maryland?

A. I am secretary of the United Surety Company.

(3) Q. How long have you occupied your present position with said company?

A. Since its organization, August 31st, 1905.

(4) Q. State what connection, if any, Messrs. Lloyd & Robertson of 108 Sutter street, San Francisco, or either of them, had with your company in February, 1908?

A. General agents for our company for the states of California, Washington and Nevada; also Oregon.

(5) Q. If you answer the foregoing question that they were your agents, state whether or not they were authorized to enter your company for business in the State of Washington?

A. They were.

(6) Q. State, if you know, whether or not your company was entered for business in the State of Washington in February, 1908?

A. Yes, it was.

(7) Q. If you answer the foregoing question in the affirmative, state, if you know, what entrance fees were paid.

A. Two hundred and forty-five (\$245.00) dollars.

(8) Q. State, if you know, whether or not your company received a receipt for the entrance fees paid?

A. Yes.

(9) Q. If you answer the foregoing question in the affirmative, state, if you know, whether or not the purported receipt, signed by J. H. Schively, deputy insurance commissioner, marked Exhibit "A" and attached hereto, is the original receipt received for said payment?

A. It is the original receipt.

(10) Q. State, if you know, whether or not a certificate of authority was issued on or about the 10th day of February, 1908, for your company to do business in the State of Washington.

A. Yes; it was issued at that time.

(11) Q. If you answer the foregoing question in the affirmative, state whether or not the purported certificate of authority, signed by J. H. Schively, as deputy insurance commissioner, marked Exhibit "B" and attached hereto, is the original certificate of authority issued to your company?

A. Yes, it is the original certificate of the company.

(12) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, at any time subsequent to the 10th day of February, 1908, made an examination of the books, records or securities of the United Surety Company, of Baltimore, Maryland, would you know of such examination having been made?

A. Yes, I would have known of such examination if it had been made.

(13) Q. If you answer the foregoing question in the affirmative, state, if you know, whether or not an itemized statement of the expenses of such examination was presented to the United Surety Company, of Baltimore, Maryland.

A. Lloyd & Robertson, our general agents, acting for our company, were directed to qualify our company in the State of Washington. They advised us that it would cost \$245.00 to qualify our company, said amount covering examination of the company and filing of statements, etc., and the purchase of two licenses. We directed our agents to proceed to qualify our company, and we paid the fees. If any itemized statement was rendered, it was delivered to our agents, Messrs. Lloyd & Robertson, San Francisco, who advised us that the cost of qualifying the company was \$245.00, which amount we reimbursed them. This is the only statement of any kind rendered by the insurance department of the State of Washington against our company since its entry in that state in 1908, except usual fees paid the department for the renewal of our license in January, 1909.

ROBERT A. DOBBIN, JR.

Subscribed and sworn to before J. Wallace Bryan, notary public in and for the State of Maryland.

#### EXHIBIT "A."

INSURANCE DEPARTMENT, STATE OF WASHINGTON.  
OLYMPIA, Feb. 11, 1908.

\$245 no-100

Received from United Surety Company, two hundred and forty-five no-100 dollars, amount of entrance fees and examination \$235.00, 2 licenses \$10.00.

No. 1300.

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

#### EXHIBIT "B."

STATE OF WASHINGTON, INSURANCE DEPARTMENT.  
No. 86. *Certificate of Authority.*

OFFICE OF INSURANCE COMMISSIONER,  
OLYMPIA, Feb. 10, 1908.

WHEREAS, From reports on file in this office, I have satisfactory evidence showing that the United Surety Company, of Baltimore, Maryland, has complied with the laws of the State of Washington regulating and governing the transaction of insurance business in the state, and that said company is in a solvent condition in the true intent and meaning of said laws:

NOW THEREFORE, By virtue of authority conferred upon me by section 4 of said insurance law, and pursuant to the requirement of the same, I, SAM H. NICHOLS, insurance commissioner of the State of Washington, hereby certify that said company is duly authorized to transact the business of surety burglary, plate glass, and casualty insurance in this state from the date hereof to and including December 31, 190...

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the State of Washington at the City of Olympia, County of

Thurston, State of Washington, on this 11th day of February, A. D. 1908.

SAM H. NICHOLS,

*Insurance Commissioner.*

By J. H. SCHIVELY,

*Deputy Commissioner.*

[SEAL]

By THE SECRETARY: Deposition of F. B. Lloyd—

(1) Q. State your name and residence.

(2) Q. State your connection, if any, with the United Surety Company, of Baltimore, Maryland, on or about February 10, 1908?

(3) Q. State whether or not, on or about February 10, 1908, you caused the United Surety Company, of Baltimore, Maryland, to be entered for business in the State of Washington?

(4) Q. If you answer the foregoing question in the affirmative, state, if you know, what entrance fees were paid?

(5) Q. If you answer that you paid entrance fees, state to whom said entrance fees were paid?

(6) Q. What was the amount of those entrance fees?

(7) Q. In what manner were they paid?

(8) Q. If you state in answer to the foregoing question that you drew a draft in favor of J. H. Schively in the sum of two hundred and forty-five dollars, is the purported draft signed by F. B. Lloyd, marked Exhibit "A" and attached hereto, the original draft which you drew and delivered to J. H. Schively in payment of said entrance fees?

#### EXHIBIT "A."

OLYMPIA, WASH., Feby. 10, 1908.

#### *Capital National Bank.*

On demand pay to the order of J. H. Schively, insurance commissioner, two hundred forty-five dollars (\$245.00), value received, and charge same to account of United Surety Company, Baltimore, Md.

(Signed) F. B. LLOYD.

Endorsements: J. H. Schively, Dep. Ins. Com'r.

Pay to the order of Seaboard National Bank, New York City, N. Y.—  
Capital National Bank, Olympia, Wash., W. F. Foster, Cashier.

Pay Drovers & Mechanics Nat'l Bank, Baltimore, Md., or order—  
Seaboard Nat'l Bank, of New York.

Drovers & Mechanics Nat. Bank, Per .....

In answer to interrogatory No. 1, the witness saith: F. B. Lloyd, San Francisco.

In answer to interrogatory No. 2, the witness saith: On or about the 10th day of February, 1908, I was the associate general agent of the National Surety Company, of Baltimore. The firm of Lloyd & Robertson, of which I am a member, is the Pacific Coast general agent of this company.

In answer to interrogatory No. 3, the witness saith: On or about February 10, 1908, I caused the United Surety Company, of Baltimore, Maryland, to be entered for business in the State of Washington by paying the fees called for. I do not recall the amount of these entrance fees.

In answer to interrogatory No. 4, the witness saith: I do not know what proportion of the money was paid for entrance fees. I do not know what entrance fees were paid.

In answer to interrogatory No. 5, the witness saith: The draft which I drew, and which included the entrance fees, was handed, I think, to the insurance commissioner in person. I am not quite clear on this point, however. I may have handed it to some one in his office.

In answer to interrogatory No. 6, the witness saith: I do not know

the amount of the entrance fees, although they were included in the amount for which I drew the draft.

In answer to interrogatory No. 7, the witness saith: As stated before, the fees were included in the draft of \$245, drawn in favor of J. H. Schively, insurance commissioner, February 10, 1908.

In answer to interrogatory No. 8, the witness saith: The draft marked Exhibit "A" attached to this deposition, signed by me, is the original draft which I drew and delivered, as per statements herein made, in payment of fees, but I do not know what proportion of this draft of \$245.00 was for entrance fees.

F. B. LLOYD.

Subscribed and sworn to before N. E. W. Smith, notary public in and for the city and county of San Francisco, State of California.

BY THE SECRETARY: Deposition of A. D. Baker—

(1) Q. State your name and residence.

A. Arthur D. Baker, Lansing, Michigan.

(2) Q. State your connection, if any, with the Michigan Commercial Insurance Company, of Lansing, Michigan.

A. I am secretary and treasurer.

(3) Q. State, if you know, whether or not the Michigan Commercial Insurance Company, of Lansing, Michigan, was admitted to do business in the State of Washington in March, 1908?

A. I know that it was; yes, sir.

(4) Q. If you answer the foregoing question in the affirmative, state, if you know, what entrance fees were paid by said company?

A. Said company paid fees of \$135.00—that is the entrance fee paid.

(5) Q. If you state that entrance fees were paid, state how such payment was made?

A. As I said before, there was \$135.00 paid for entrance.

(6) Q. If you answer that payment was made by check, state, if you know, whether or not the purported check, signed by the Michigan Commercial Insurance Co., by T. J. A. Tiedemann, general agent, marked Exhibit "A" and attached hereto, is the original check issued in payment of said entrance fees?

A. Yes, sir; I believe that to be the check.

(7) Q. If J. H. Schively, deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, at any time since March 10, 1908, made an examination of the books, records or securities of the Michigan Commercial Insurance Company, of Lansing, Michigan, would you know of such examination having been made?

A. Yes, sir; I would.

(8) Q. If you answer the foregoing question in the affirmative, state whether such examination has ever been made?

A. No, sir; no examination has ever been made.

(9) Q. If you answer the foregoing question in the affirmative, state, if you know, whether or not an itemized statement of the expenses of such examination was presented to the Michigan Commercial Insurance Company, of Lansing, Michigan?

(10) Q. Has your company ever had any correspondence with the deputy insurance commissioner of the State of Washington relative to the cost of admission to do business in said state?

A. Yes, sir; our company has.

(11) Q. If you answer the foregoing question in the affirmative, state, if you know, whether or not the purported letter, dated November 30, 1907, marked Exhibit "B" and hereto attached, is the original letter received by your company relative to the cost of admission?

A. Yes, sir; Exhibit "B" is the original letter.

(12) Q. If you answer the foregoing question in the affirmative, state, if you know, whether said letter was received through the United States mail from the insurance department of the State of Washington?

A. Said letter was received through the United States mail from said department.

ARTHUR D. BAKER.

Subscribed and sworn to before Chas. H. Hayden, notary public in and for the State of Michigan.

#### EXHIBIT "A."

No. 89.

SAN FRANCISCO, CAL., March 10, 1908.

*The First National Bank of San Francisco, California:*

Pay to J. H. Schively, Deputy Ins. Com'r, or order, \$135.00 (one hundred thirty-five and no-100 dollars).

(Signed) MICHIGAN COMMERCIAL INSURANCE CO.

T. J. A. TIEDEMANN, *General Agent*.

Endorsements: J. H. Schively, Dep. Ins. Com'r.

Pay to the order of the First National Bank of San Francisco, Cal.—  
Capital National Bank, Olympia, Wash., W. J. Foster, Cashier.

#### EXHIBIT "B."

November 30th, 1907.

*Mr. A. D. Baker, Secretary Michigan Commercial Ins. Co., Lansing, Michigan.*

DEAR SIR: Complying with the request of Mr. T. J. A. Tiedemann, I enclose you forms in duplicate to be made out in seeking admission to the transaction of business in this state. The enclosed marked circular-letter will indicate the steps to be taken.

You will notice that I have not included a blank form for your annual statement, as our edition is exhausted, and is not yet from the hands of the printer. You can secure the blanks from your own department, and the same will be acceptable with this department.

The cost of admission is \$235 for each company—\$35 statutory entrance fee and \$200 for the verification of the company's first report; but by special arrangement with the Washington Advisory Committee, companies entering through San Francisco managers are charged only \$135 each, which must be paid in advance.

Yours very truly,

.....  
*Deputy Ins. Commissioner.*

BY THE SECRETARY: Deposition of F. C. Overton—

(1) Q. State your name and residence.

A. F. C. Overton, Keokuk, Iowa.

(2) Q. State your connection, if any, with the Standard Fire Insurance Company, of Keokuk, Iowa?

A. I am president of the company.

(3) Q. State how long, if at all, you have been connected with this company?

A. Since its organization—that is, since March, 1904.

(4) Q. State if your company was ever informed by J. H. Schively, deputy insurance commissioner of the State of Washington, as to entrance fees necessary to be paid by your company for admission to do business in the State of Washington?

A. Yes.

(5) Q. If you answer the foregoing question in the affirmative, state how said representations were made?

A. By a letter.

(6) Q. If in answer to the foregoing question you state that representations were made by letter, is the purported letter signed by J. H. Schively as deputy insurance commissioner, marked Exhibit "A" and attached hereto, the original letter received by you containing such representations?

A. Yes, it is the original letter.

(7) Q. State, if you know, whether or not, subsequent to the receipt of the above mentioned letter, the Standard Fire Insurance Company, of Keokuk, Iowa, was entered to do business in the State of Washington?

A. It was.

(8) Q. If you answer the foregoing question in the affirmative, state, if you know, what entrance fees were paid?

A. The sum of two hundred and thirty-five dollars; paid through Fred Tebben, our general agent, at Spokane, Washington.

(9) Q. State, if you know, whether or not you were ever advised by J. H. Schively, deputy insurance commissioner, that the Standard Fire Insurance Company, of Keokuk, Iowa, had been entered to do business in the State of Washington?

A. Yes.

(10) Q. If you answer the foregoing question in the affirmative, state how you received such notice?

A. By letter.

(11) Q. If in answer to the foregoing question you state that such notice was contained in a letter, state, if you know, whether or not the purported letter, signed by J. H. Schively as deputy insurance commissioner, marked Exhibit "B" and attached hereto, is the original letter received by your company containing such notification?

A. Yes, it is.

(12) Q. If J. H. Schively, as deputy insurance commissioner, or any other representative of the insurance department of the State of Washington, subsequent to the 4th day of May, 1908, made an examination of the books, records or securities of the Standard Fire Insurance Company, of Keokuk, Iowa, would you know of such examination having been made?

A. Yes, I would.

(13) Q. If you answer the foregoing question in the affirmative, state whether or not such examination was ever made?

A. No examination was ever made.

F. C. OVERTON.

Subscribed and sworn to before A. T. Marshall, notary public in and for the State of Iowa.

#### EXHIBIT "A."

THE STATE OF WASHINGTON, DEPARTMENT OF INSURANCE,  
OLYMPIA, May 4, 1908.

*Standard Fire Ins. Co., Keokuk, Iowa.*

GENTLEMEN: At the request of Mr. Fred Tebben, I am forwarding you under separate cover a copy of our insurance laws and blanks necessary to be filled out in seeking admission to the transaction of business in Washington.

Costs of admission are \$235—\$35 statutory entrance fees and \$200 for the verification of your first report and securities—all of which is payable in advance.

Very truly yours,

J. H. SCHIVELY,

*Deputy Insurance Commissioner*

## EXHIBIT "B."

September 14, 1908.

*F. C. Overton, President Standard Fire Ins. Co., Keokuk, Iowa.*

DEAR SIR: Mr. Fred Tebben, of Spokane, entered your company, paid the fees and received the certificate of authority, together with vouchers covering the amount paid.

Very truly yours,

J. H. SCHIVELY,  
*Deputy Insurance Commissioner.*

BY MR. LEE: We tender at this time the same evidence that we tendered yesterday; it will only probably take a few moments. We desire to prove that in none of these cases the state received more than thirty-five dollars.

BY THE PRESIDING OFFICER: The chair desires to call attention to the fact that the depositions read this morning have not been received or introduced in evidence, nor should they be considered as evidence any more than that they be related or have a bearing upon the guilt or innocence of respondent under articles 3 and 4.

BY MR. LEE: We desire to prove in connection with each one of these depositions that the state only received the statutory fee of thirty-five dollars.

BY MR. ISRAEL: I think, if it is competent for any purpose, it is not necessary to bring the books of the insurance commissioner here. The vouchers are here and they speak for themselves.

BY MR. LEE: Counsel for respondent then, in order to obviate the necessity of this proof, admits that in none of these cases did the state receive more than a thirty-five-dollar fee?

BY MR. ISRAEL: With the exception of where there was a license fee or agent's fee or something of that kind. I don't think it necessary to bring the books here at this time. I think it is established by the vouchers themselves.

BY MR. LEE: In connection with article 2, I desire to state that Mr. Lebo has apparently disappeared, and we cannot find him. He is supposed to be here. In connection with article 18, Mr. Harding, of Spokane, and Mr. Emmons in connection with 19, were called away on personal matters of vital importance, and will be here, I think, on the 11:30 train.

BY MR. ISRAEL: As I understand, you have been over article 19?

BY MR. LEE: If they are not here by 1:30, we will take up the perjury charge at that time—I should have said articles 17 and 18.

BY THE PRESIDING OFFICER: I understand then, Mr. Lee, that just at this time you are not ready to proceed with two of the counts.

BY MR. LEE: The witnesses were excused yesterday and are unavoidably detained, and we are not able to locate them; and if they are not here after this recess, we will be ready to prove all the other articles without any recesses or adjournment whatever.

BY THE PRESIDING OFFICER: If there is no objection, this court will take a recess until 1:30 this afternoon.

At 11:25 a. m. the court of impeachment took a recess until 1:30 this afternoon.



## AFTERNOON SESSION.

At 1:40 p. m. the Senate, sitting as a court of impeachment, reconvened.

BY THE PRESIDENT: Senator Bryan will take the chair.

BY MR. MANAGER EDGE: The train has just arrived, I believe, carrying a couple of our witnesses.

BY MR. LEE: Mr. President, we will offer proof on article 17 at this time, and we would like to have the senators look at that portion of the articles of impeachment.

## ARTICLE XVII.

That on July 31st, 1907, said J. H. Schively, as deputy insurance commissioner, made a perfunctory examination of the Washington Hardware & Implement Dealers' Mutual Fire Insurance Association, of Spokane, Washington; that said examination consumed in time less than half an hour; that said Schively, as such deputy insurance commissioner, demanded of E. W. Evenson, the secretary of said association, the sum of two hundred dollars for said examination; that said Evenson refused to pay said amount, for the reason that same was excessive, exorbitant and extortionate; that thereupon said Schively reduced the amount demanded to the sum of one hundred dollars, and collected of and received from said association, through said Evenson, the sum of one hundred dollars, which sum was greatly in excess of his expenses incurred in said examination; that said Schively did not at that time, nor at any other time, present to said association nor to said Evenson, in detail, the items nor any itemized list of his expenses incurred in making such examination, as by law required to do.

Wherefore, the said J. H. Schively, as deputy insurance commissioner, by reason of not presenting the detailed statement of his expenses as by law required, and by demanding and receiving a sum greatly in excess of his expenses incurred in making said examination, was guilty of extortion, arbitrary and oppressive conduct, gross impropriety, and malfeasance in office.

BY MR. LEE: I call the chair's attention again to the fact and the Senate's attention again to the fact that this is proof that goes to article No. 17. I would like to have the sergeant-at-arms call Mr. E. W. Evenson.

E. W. Evenson, a witness produced on behalf of the complainants herein, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. LEE: Q. State your name.

A. E. W. Evenson.

Q. And your address.

A. Spokane, Washington.

Q. Were you in July, 1907, connected with the Washington Hardware & Implement Dealers' Mutual Fire Insurance Association, of Spokane, Washington?

A. I was, as secretary.

Q. Are you secretary at this time?

A. Yes, sir.

Q. State whether or not on or about July 31st, 1907, any representative from the insurance department of this state visited your office in Spokane for the purpose of making an examination.

A. They did.

Q. State who that representative was.

A. Mr. Schively.

Q. Was he deputy insurance commissioner at that time?

A. He so represented himself to be.

Q. Now, Mr. Evenson, without inquiring of you in detail about this, proceed and state to the Senate the circumstances surrounding Mr. Schively's visit at that time, what examination, if any, he made, and what compensation, if any, was received.

A. I received a letter about the 20th, advising me of his intended visit; that he would be there about the 31st of July or the 1st of August, and he asked me if I would have a report prepared—

Q. Just a moment before you go further. I will hand you this letter and ask you to inspect and state whether or not that is the letter about which you are testifying? [*Handing a letter to witness; witness examines letter.*]

A. Yes.

BY MR. LEE: I will offer this letter in evidence.

[*Mr. Lee presents letter to Mr. Israel. Mr. Israel examines letter.*]

BY MR. ISRAEL: No objection. [*Letter marked "Article 17, Complainants' Exhibit No. 1."*]

Q. I wish you to read that letter.

A. Aloud.

Q. Yes.

A. "Insurance Department, State of Washington, Olympia, Wash., July 24, 1907.—E. W. Evenson, secretary, Washington Hardware & Implement Dealers' Mutual Fire Association, Spokane, Washington. Dear Sir—Answering yours of July 18th, I beg to state that the insurance commissioner is not supposed to examine every policy, but to keep a general eye upon the several companies and see that they remain solvent. In pursuance of this policy, you are hereby authorized to proceed in accordance with the spirit of your letter in writing policies. I expect to be in Spokane either July 31st or August 1st for the purpose of looking into your affairs. I shall be glad if you will have a financial statement ready for me up to July 1st. If you desire, you can have a supplemental report, including the month of July. Allow me to state, however, that this visit is not the result of any question in my mind regarding your standing, but is merely in accordance with the laws of this state, which require a yearly visit to the companies organized in the state. Very truly yours, J. H. Schively, Deputy Insurance Commissioner."

Q. State what, if anything, happened after this letter was received by you.

A. I called in a firm of expert auditors and accountants and had them prepare a report.

Q. You got the report?

A. A financial statement taken from the books of the company, showing the actual condition at that time.

Q. Did those expert accountants make an examination of the books?

A. Yes.

Q. In preparing this report?

A. Yes, from A. to Z.

Q. Proceed and relate what happened then relative to Mr. Schively's visit.

A. He came into the office with Louis LeMaster, an expert accountant, and Mr. LeMaster remained for awhile and left Mr. Schively with me, and Mr. Schively, after seeing some books in the office, said, "Well, this is different; this is entirely better," and I had assumed he had been somewhere else on a similar mission. After talking awhile, he asked me if I had an extra report which I could spare, and I told him he could take that; that I thought I had a carbon of it, and he took the report and then announced that he was going to charge me two hundred dollars for making this examination; and as he did, his face lit up with a peculiar smile, and I thought he was joking. I treated him with the same expression myself, and I told him that he would have a h— of a time getting two hundred dollars from this company, because he could see by the report that we were broke; and he went on to say that it was the custom to make this charge, but as he had come over there with the intention of examining another company that he could split the charge up for one hundred dollars cash; but even when he mentioned the one hundred dollars I thought that he was joking, but I asked him to sign a voucher—

Q. Examine this voucher and state whether or not that is the voucher about which you are testifying. [*Handing witness document.*]

A. [*After examination.*] Yes.

BY MR. LEE: I will offer this document in evidence.

BY MR. ISRAEL: [*After examining*] No objections.

[*Voucher marked "Article 17, Complainants' Exhibit No. 2."*]

BY MR. LEE: Please read that voucher to the Senate.

A. [*Reading*] "No. 124; amount \$100.00; Spokane, Washington, July 31st, 1907. The Washington Hardware & Implement Dealers' Mutual Fire Insurance Association, of Spokane, Washington, to J. H. Schively, insurance commissioner, Dr.; inspection and fees of insurance department, one hundred dollars"; and then below is a memorandum, "Received check No. — in full payment of the above account, one hundred dollars. [*Signed*] J. H. Schively."

Q. State what, if anything, happened after this transaction as to the voucher. Proceed in detail as to what happened.

A. He signed the voucher, and I explained to him that our treasurer would have to issue the check, but it would have to be signed jointly by the president, the treasurer and myself, and would have to go to the treasurer for signature, which would delay it for a day or two, and it would arrive in his office in due season, and he accepted that explanation and left the office. I sent the voucher to the treasurer, which was an order that the check be issued to him, and the check was issued and sent on to him.

Q. State whether or not you are familiar with the signature of the treasurer.

A. I am; yes, sir.

Q. State whether or not that is the signature of the treasurer of your company. [*Indicating.*]

A. Yes, sir.

Q. Are you familiar with Mr. Schively's signature?

A. Not sufficiently well to identify it.

BY MR. ISRAEL: We will admit that that is Mr. Schively's signature.

BY MR. LEE: We will introduce this in evidence.

BY MR. ISRAEL: No objection.

[Instrument marked "Article 17, Complainants' Exhibit No. 3."]

Q. Read that.

A. [Reading] "Spokane, Washington, August 5th, 1907, No. 125. The Washington Hardware & Implement Dealers' Mutual Fire Insurance Association, of Spokane, Washington, voucher 124: Pay to the order of J. H. Schively one hundred dollars. W. P. Lucas, President; E. L. Scott, Treasurer; to Spokane and Eastern Trust Company, Spokane, Washington."

Q. Is there an endorsement on it?

A. There is an endorsement on the back of it, "J. H. Schively."

Q. Examine this [handing witness the document] and state if you know whether this receipt was to cover this item or not.

A. [Examining] Yes.

BY MR. ISRAEL: Does that cover the same item?

BY MR. LEE: Yes.

BY MR. ISRAEL: No objection.

Q. Read that.

A. [Reading] "Insurance Department, State of Washington; one hundred dollars; Olympia, Washington, August 8th, 1907. Received from the Washington Hardware & Implement Dealers' Mutual Insurance Association, one hundred dollars, account of official examination. No. 3126; signed, J. H. Schively, as deputy insurance commissioner."

[Receipt marked "Article No. 17, Complainants' Exhibit No. 4."]

Q. State whether or not any examination was made at that time, and if so, what was the nature and extent of it?

A. There was an examination, and, as I stated before, from one end of the books to the other, and it covered a period of five days for two men.

Q. You are referring to the examination that Mr. Schively made at that time in your office?

A. Of the books?

Q. Yes.

A. He did not see a book of accounts carrying an item, alluding to cash payments received or disbursed. He saw a policy register and the system of keeping insurance in force, but that had no relation to our financial condition.

Q. State to the Senate what was the extent of Mr. Schively's investigation at that time.

A. As to the financial condition of the company?

Q. State what was done in your office at that time.

A. He accepted this report made by Messrs. LeMaster and Cannon.

Q. That was all?

A. That was all.

Q. State how long he was in your office.

A. About twenty-five minutes.

Q. State to the Senate whether or not any detailed statement of expenses was presented to you at that time.

A. None at all.

Q. Were the books in your office?

A. What books?

Q. The company's books?

A. Yes, sir.

Q. If there had been any detailed statement of expenses, would it have been presented to you?

A. Yes, sir.

Q. Now, Mr. Evenson, state to the Senate what your expenses are, approximating them, from Spokane to Olympia and return, spending say two days in Spokane.

A. Spokane to Olympia and return spending two days in Spokane?

Q. Yes, what would be the expense of a trip like that?

A. Do you mean spending two days in Olympia?

Q. No, sir—

BY MR. ISRAEL: That is not right. You have got that wrong.

[*Question read.*]

BY MR. LEE: I will withdraw that question, to clarify the atmosphere.

Q. Are you familiar with the hotel expenses in Spokane?

A. Yes.

Q. State to the Senate, giving an approximate idea, what would be the expense of a trip from Olympia to Spokane, spending two days in Spokane and returning to Olympia.

A. Forty-five dollars.

*Cross Examination—*

BY MR. ISRAEL: Q. Who were LeMaster & Cannon?

A. They advertised themselves as expert auditors and accountants.

Q. Well, irrespective of what they advertised themselves to be, do you know more of your own knowledge what they were?

A. Yes, sir.

Q. Do you know personally who LeMaster & Cannon are?

A. Yes, sir.

Q. Do you know their business?

A. Yes, sir.

Q. They are expert accountants, of your own knowledge?

A. Yes, sir.

Q. Their professional standing is as high as there is in the state?

A. If they were not, I would not have employed them.

Q. Well, don't you know as a fact that their standing is of the highest?

A. That is my opinion.

Q. You had them examine your books, take off a trial balance and get a report ready to exhibit to the insurance commissioner when he came over?

A. Yes, sir.

Q. When he came to your office, you did so?

A. Did what?

Q. You did so exhibit to him the grand report?

A. Yes, sir.

Q. He told you at the time that LeMaster & Cannon were acting as confidential advisors to the insurance department at Spokane?

A. No, sir.

Q. That their reports were always satisfactory?

A. No, sir; he made no such statement to me then.

Q. Did he afterward? Didn't he say to you in the substance of the conversation that LeMaster & Cannon were recognized by the insurance department of the State of Washington as being absolutely reliable accountants?

A. Not that I can recall, Mr. Israel.

Q. You don't recall that conversation?

A. No, sir; he might have done it.

Q. Might have done it. At what time of the day was it that he called at your office?

A. My memory is that it was shortly before noon.

Q. Do you know whether he had called before that one or two times? Had you been in all the morning?

A. Well, the nature of my business is such that I travel in and out of the office a great deal.

Q. He could have been there before and you know nothing about it?

A. Yes, sir.

Q. Who were the other officers of your company—your president?

A. The president was W. B. Lucas, at Davenport.

Q. And who were the other officers—what constituted the officers of your company?

A. President, vice-president, secretary, and treasurer, and six directors.

Q. And what was your office?

A. I was secretary.

Q. And who was treasurer?

A. E. L. Scott, at Oaksdale.

Q. And who was the vice-president?

A. C. A. Lloyd, Fairfield.

Q. You were the only resident of Spokane in the office?

A. Yes, sir.

Q. Did the other officers have places of business in Spokane or do business in Spokane?

A. They might do business there, but they have no places of business in Spokane.

Q. Now, after Schively returned to Olympia he sent you a copy of his report upon your company?

A. Yes, sir; I believe he did.

Q. You would recognize it if you saw it?

A. I think I would.

Q. Let me hand you this paper after first having it marked by the secretary, "Article XVII, Defendant's Identification A," and ask you to look it over and state whether, from your recollection, that is not a copy of the report that was sent you by the insurance commissioner as to the conditions and affairs of your company after he returned to Olympia?

A. [Witness examines paper.] I could not identify the figures; but to the best of my knowledge and belief, this is.

Q. A copy of that report?

A. Yes, sir; this is a copy of the report.

Q. Let me show you, after having it first marked "Article XVII, Defendant's Identification B," a letter. I will ask you to examine this letter, Mr. Witness, and state if you remember—state from your recollection, if you can—if it is not a copy of an original letter that you received at the time you received the copy of the report [hands to witness], and enclosed with the report transmitting it to you?

A. This is a copy of a letter which accompanied a copy of that letter to me.

Q. Of that report to you?

A. Well, call it report, then.

Q. Yes; that is a copy of the letter, report?

A. Yes, sir, as I remember it.

Q. As you remember it?

A. To the best of my knowledge and memory.

Q. Now, all you know of the amount of time or expense attendant upon this examination and the preparation of this report was the amount of time that Mr. Schively spent actually in your office with you that day when he came in, and you furnished him the LeMaster report and he signed the voucher and went out?

A. Read that question, please.

[*Question read.*]

A. You mean as to the time Mr. Schively put in in making this examination?

Q. Yes.

A. That is all I know of; yes, sir.

Q. You don't pretend, Mr. Evenson, to be understood as testifying that all that he did in connection with examining your company was what he did in your immediate presence?

A. No, sir.

Q. He did say to you at that time by reason of the fact that he was examining another company at the same time in Spokane that he would cut the LeMaster charge of \$200.00 in two and make it \$100.00 to each company?

A. Yes, sir.

Q. You have no personal knowledge of how long Mr. Schively remained in Spokane after he was in your office that day?

A. No, sir.

*Re-Direct Examination—*

BY MR. LEE: Just one other question. You paid LeMaster & Cannon to make this examination, did you?

A. I paid them \$88.70, to the best of my memory.

[*Witness excused.*]

BY MR. LEE: I will have the sergeant-at-arms call Mr. Best.

BY MR. LEE: *Mr. President and Gentlemen of the Senate*—In behalf of the managers, I desire to introduce proof next on article 23. The last was article 17. I call your attention now to article 23. I will read it. [*Counsel reads article 23 in full.*]

In connection with this article, Mr. President and gentlemen of the Senate, I desire first to offer as evidence the deposition of Mr. William Wilkinsen, president of the Atlas Insurance Company.

BY THE SECRETARY: Deposition of William Wilkinsen—

(1) Q. State your name and residence.

A. William Wilkinsen.

(2) Q. State your connection, if any, with the Atlas Insurance Company, of Des Moines, Iowa.

A. I am president thereof.

(3) Q. How long have you been connected with said company?

A. I have been connected with said company and have been its president since it was organized in 1905.

(4) Q. Has your company ever had any correspondence with J. H. Schively, deputy insurance commissioner of the State of Washington, relative to the cost of admission to do business in the State of Washington?

A. Yes, sir.

(5) Q. If you answer the foregoing question in the affirmative, state, if you know, whether or not the purported letters signed by J. H. Schively, as deputy insurance commissioner, marked Exhibits "A" and

"B" respectively and attached hereto, are the original letters received by your company relative to the cost of admission?

A. Yes, sir; the two letters, marked Exhibits "A" and "B" respectively and attached hereto, are the original letters received by said company.

(6) Q. Was the Atlas Insurance Company, of Des Moines, Iowa, admitted to do business in the State of Washington at any time subsequent to January 7, 1908?

A. Yes, sir; it was so admitted within the past sixty days.

WM. WILKINSON.

Subscribed and sworn to before J. D. Wallingford, notary public in and for the State of Iowa.

#### EXHIBIT "A."

STATE OF WASHINGTON, DEPARTMENT OF INSURANCE,  
OLYMPIA, January 7, 1908.

*Wm. Wilkinson, President, Atlas Insurance Co., Des Moines, Iowa.*

DEAR SIR: Under separate cover I forward you all blank reports and other documents required to be executed in seeking admission to the transaction of business in the State of Washington, together with copy of our laws and explanatory circular letter.

The costs of admission are \$235—\$35 statutory entrance fees and \$200 for the verification of the company's securities and first report, all of which is payable in advance.

Very truly yours,

J. H. SCHIVELY,

*Deputy Insurance Commissioner.*

#### EXHIBIT "B."

STATE OF WASHINGTON, DEPARTMENT OF INSURANCE,  
OLYMPIA, February 13, 1908.

*T. H. Neson, Secretary, Atlas Insurance Co., Des Moines, Ia.*

DEAR SIR: Under separate cover I am forwarding you blank forms required to be executed in seeking admission to the transaction of business in this state, together with copy of our insurance laws and circular letter of explanation.

The costs of admission are \$235—\$35 entrance fees and \$200 for the verification of the company's first report and securities, all of which must be paid in advance.

Very truly yours,

J. H. SCHIVELY,

*Deputy Insurance Commissioner.*

Charles S. Best, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

#### *Direct Examination—*

BY MR. LEE: Mr. Best, state your full name and residence?

A. Charles S. Best, Seattle, Washington.

Q. What is your occupation, Mr. Israel?

BY MR. ISRAEL: I try to practice law for a living.

BY MR. LEE: Or Mr. Best?

BY THE PRESIDING OFFICER: The objection is sustained.

A. Insurance.

Q. Now, have you ever had any connection with the Atlas Insurance Company, of Des Moines, Iowa?

A. No; I had some correspondence with them relative to insurance here.



Q. When was that correspondence, Mr. Best?

A. That was early in 1908, during the winter of 1908.

Q. State what the nature of that correspondence was?

A. Why, I communicated with them to see if they would enter out here and sent them all the facts regarding the cost of so doing.

Q. What statement did you make to that company at that time regarding the entrance fees to this state?

A. I told them that the fees amounted to \$35.00.

Q. State what further correspondence, if any, you had with this company relative to admission to this state?

A. I had very little correspondence after that. My partner called upon them and he was informed that they had received a letter stating that the fees were \$235.00 and that they would not come in; they did not intend to stand for any extortion at that time.

Q. What do you mean by your "partner"?

A. Mr. W. B. Goff, in business with me.

Q. State to the Senate what conversation, if any, you had with Mr. Schively, deputy insurance commissioner, relative to the admission of this company?

A. I came down to Olympia and took the matter up with Mr. Schively. I don't recall that the name of the company was mentioned, but I told him that a company I had communicated with had informed us that they had been held up for \$235.00, and wanted an explanation of it. And he stated that that was the rule that had been made by Mr. Nichols. I told him that I did not think Mr. Nichols had any authority to make rules—that he was here to enforce the law. And he further stated that had he known that the company was to be represented here by me, he would have simply asked them the fee of \$35.00.

Q. He didn't say anything about Mr. Nichols, did he, in that latter part of the conversation—that if he had known that you would represent them he would have asked for only \$35.00?

A. No, he did not mention Mr. Nichols then.

Q. Nothing said about Mr. Nichols then?

A. No, only as I say.

Q. Do you know whether or not the company was entered at that time or later?

A. It was not. I am not sure whether it was entered later. It may have been entered this year; nothing up to the first of the year.

Q. Have you detailed now the conversation that occurred with Mr. Schively at that time? Is there anything else that occurs to you?

A. Why, he simply said that hereafter if I was communicating with any companies to enter them out here to let him know what they were, and he would be guided in that in letting them know when he wrote them in regard to the fees, that they could be entered for the statutory fee of \$35.00.

Q. That was all the conversation you had with him at that time?

A. Yes, sir.

Q. Did you have any conversation with him at any subsequent time regarding this company?

A. No.

Q. The conversation, then, that you have related here concluded the incident as to that company?

A. Yes.

Q. State whether or not you informed the insurance company of that conversation?

A. I did not inform them of the conversation, but wrote them that

the only fee that could be charged was \$35.00, and that anything further than that would be extortionate.

*Cross-Examination—*

BY MR. ISRAEL: Q. Your name is Charles S. Best?

A. Yes, sir.

Q. You are a brother of Allen M. Best?

A. Alfred M.

Q. Alfred M. Best?

A. Yes, sir.

Q. You are familiar with Best's Insurance Reports, that are gotten out and copyrighted by the Alfred M. Best Company, Incorporated?

A. Yes, sir.

Q. This volume that I hold in my hand is one of those reports, is it not?

A. Yes, sir.

Q. You gather data for the compilation of these reports?

A. I do.

Q. You are one of the experts who get up these reports?

A. If I may be classed as expert.

Q. Throughout the insurance world the Best reports stand in insurance matters as does Dunn or Bradstreet in the commercial world; that is true, is it not?

A. I believe it does, yes.

Q. That is true?

A. I believe it is, yes.

Q. Should any one desire to know at any time the standing, personnel or character of any particular insurance company in the United States, if they can get a copy of Best's Insurance Report for the year, they have the information?

A. I believe they do.

Q. And they have what is regarded throughout the insurance world as reliable information?

A. As far as we can get it.

Q. Now these Best Reports are used in practically all of the insurance departments throughout the United States?

A. Well, I know they have them. I don't know to what extent they use them.

Q. Do you know they have been used in the department of this state?

A. They have them here.

Q. As an authority?

A. They have them here. I don't know how much they use them.

Q. Now then, you learned that the Atlas Insurance Company had made an application to enter the State of Washington and they had been required by the insurance department to pay \$235.00 in advance before they were admitted?

A. They so informed me.

Q. So informed you. After receiving such information, you came to Olympia and took up the matter with Mr. Schively?

A. Yes.

Q. You came here for the purpose of ascertaining why this charge of \$200.00, outside of the \$35.00, was made?

A. Yes, sir.

Q. You were informed, first of all, that it was a rule that had been made by Mr. Nichols?

A. Yes.

Q. You were also informed that that rule as to outside companies coming into the state being required to pay an examination fee in advance had been fixed by Secretary Nichols partially with the idea that wildcat companies, who could not stand the searchlight of examination, if required to put up an examination fee in advance would probably be deterred from coming into the state; that statement was also made to you?

A. No, not that way.

Q. What was it? How was it modified?

A. There was nothing said except it was a rule made by Mr. Nichols to charge that fee, and I believe he did say that they had found it difficult after a company was entered to collect anything from them.

Q. Yes; now then, he said to you also that if he had known that you were recommending the admission of a company into the State of Washington that they would not enforce that rule of paying an examination fee in advance?

A. Yes.

Q. He also stated that for the reason it was you, Best, of the Best Insurance Reports, didn't he?

A. No, not at that time.

Q. He did afterwards?

A. He did not mention the reports; no, sir.

Q. He did subsequently?

A. No.

Q. Don't you know, Mr. Best, that he made the exception in your favor of not charging the \$200.00 in advance because of the fact that you were one of the compilers of that acknowledged authority upon insurance law and would as a matter of course not attempt to enter any company that could not stand a good report in your insurance report?

A. He may have had that in his mind, but he did not so state.

Q. Did it strike you at the time that there was any particular reason for his making an exception to companies that you would recommend?

A. None whatever.

Q. Can you now conceive of any other reason that was more reasonable than as I have suggested?

A. There is no reason why he should.

Q. Without such would be a reason?

A. No, there is no reason, even if I did publish their reports, why he should enter a company here; that has nothing to do with it.

Q. You think it would honor you too much for an insurance commissioner to have the benefit of your recommendation of a company, to believe it to be a solvent and good company by reason of your being connected with the publication of this work?

A. He should not take anything for granted.

Q. Possibly he should not, but you think he would honor you too much if he did?

A. I think he might; yes.

Q. Were you aware at any time afterwards, Mr. Best, that the secretary of state, having been advised by the attorney general of the state that he could fix—that he could collect an examination fee in advance and require it to be paid before he authorized the company to do busi-

ness; that having so been advised, he (the secretary of state) had fixed an advance entrance fee at \$200.00 for companies applying to be entered; were you aware of that at any time after your conversation with Mr. Schively?

A. Just read me that question.

[Question read.]

By MR. LEE: Mr. President, I object to that. It is cross-examination touching the matter that was not brought out on the direct. It refers to a subsequent matter. It is a palpable attempt to dispose a palpable defense, and I submit to this presiding officer that it is absolutely immaterial.

By MR. ISRAEL: Well, now, if the court please, counsel takes advantage of my weakness. I won't stand here as a lawyer and contend for a moment against his objection that the objection is not well taken as to the question not being cross-examination; if we are in court, attended with all the technical rules of a criminal court, but if we are in that parliamentary court that I have heard so much about for a week, why, in the language of the small boy, "To hell with the rules."

By MR. LEE: I am willing to give counsel great latitude, and it is very seldom that I have interposed an objection; but when counsel for respondent comes to introduce testimony as to what the secretary of state has done a long time after the allegations of this article, it is certainly beyond reason.

By MR. ISRAEL: I will not try to defend counsel's argument, on the ground that it is not well taken if we are to be governed by the rules of evidence taken in a criminal court; but if under the free and searching examination under the parliamentary rules I have heard so much about, it is just as good as any other testimony. It is good testimony, but I will admit that it is out of order under the technical rules.

By THE PRESIDING OFFICER: It seems to me that the question presumes one or two facts as having been proved that we haven't heard evidence on as yet, and, while we ought to be very liberal, I hesitate to rule upon the question—that is, sustain the objection—but will ask the counsel without any ruling to modify the question if possible.

By MR. ISRAEL: I will cheerfully do that, your honor.

By THE PRESIDING OFFICER: We are inclined to be very liberal in this investigation.

By MR. ISRAEL: Q. Did you ever have any discussion with Mr. Schively or with Mr. Nichols, aside from the conversation you have detailed as occurring between yourself and Mr. Schively, regarding any department rule of entry of the company into the State of Washington?

A. None that I recall.

Q. Then, of course, you couldn't have heard any of the things that I suggest?

A. No.

Q. Now, you are aware, Mr. Best, I presume, in your office of compiler of the insurance reports—you are aware, Mr. Best, as compiler, one of the compilers of Best's Insurance Reports—that the Atlas Insurance Company, of the State of Iowa, has entered the State of Washington and is doing business here?

A. I understood they were, but it is only hearsay. I don't know that they have.

Q. Did you have any conversation at the time of your visit to Olympia with Mr. Nichols?

A. No.

BY MR. ISRAEL: That is all.

*Re-Direct Examination—*

BY MR. LEE: Q. Mr. Best, you were before the investigating committee and heard Mr. Schively's testimony in this matter?

A. Yes, sir.

Q. What was it?

A. That he had considered me an expert in these matters and had entered the company for that reason.

Q. He did not deny what you said?

A. No.

*Re-Cross Examination—*

BY MR. ISRAEL: Q. How long have you been in the State of Washington, Mr. Best?

A. About two years and a half.

Q. From whence did you come to the State of Washington?

A. New York.

Q. And what have you been engaged in doing since you came here?

A. General agency business.

Q. At what point?

A. Seattle.

Q. How constantly have you been in the state?

A. Ever since I came here; about two years and a half.

Q. Prior to that time you were unknown to the State of Washington?

A. I think so.

Q. You had never operated west of the Mississippi river?

A. No.

Q. His Excellency, Governor Hay, has appointed you one of the insurance code commissioners, has he not?

A. Yes.

BY MR. ISRAEL: That is all.

BY MR. LEE: I ask, Mr. Israel, if you have any objection to Mr. Best being excused at this time?

BY MR. ISRAEL: I would prefer that Mr. Best be retained until tomorrow morning, until I have an opportunity to go over my notes at the incoming of court tomorrow morning.

BY THE PRESIDING OFFICER: Mr. Best will attend court tomorrow morning.

BY MR. LEE: Now, Mr. President and gentlemen of the Senate, the witnesses on articles 2, 18, 21, and 22 should have been here, but they have been unavoidably detained, and evidence as to those articles will be reserved till a little later. I think at this time the board of managers are prepared to offer proof of articles 24 and 25.

BY MR. MANAGER EDGE: If the court please, in accordance with the privilege permitted the managers a couple of days since, wherein it is agreed that prior to the introduction of proof on articles 24 and 25 a

statement at that time be permitted on the facts intended to be proven as to these articles, and I will proceed now and make that statement.

BY MR. ISRAEL: Mr. Lee, are you going to proceed with articles 24 or 25?

BY MR. LEE: It is for Mr. Edge to explain.

BY MR. MANAGER EDGE: Both of these articles have to do with the respondent's connection with the Pacific Live Stock Company.

BY MR. ISRAEL: Is the proof to be taken interchangeably as to the articles; they are not to be segregated in the trial, are they?

BY MR. MANAGER EDGE: I think that is the better way to proceed, Mr. Israel, for the reason that will obviate the necessity of calling several witnesses twice.

BY MR. ISRAEL: Well, as I understand, you will not try to make your proof on 24, and use the same witnesses on article 25, but will make the proof as to both?

BY MR. MANAGER EDGE: The proof will be put on as to both articles.

BY MR. ISRAEL: Interchangeably?

BY MR. MANAGER EDGE: Yes.

BY MR. ISRAEL: Now, if the court please, the opening statement of the manager, I take it, will be limited to article 25—the perjury charge—because that was the distinct understanding when Attorney General Lee opened the case. He was to open as to everything except as to article 25, which is the perjury charge.

BY MR. MANAGER EDGE: Well, it doesn't make much difference, Mr. Israel.

BY MR. ISRAEL: Well, go ahead, Mr. Edge.

BY MR. MANAGER EDGE: In order that the Senate may understand how we intend to prove the guilt of the defendant under these two articles, I would ask that you follow me as closely as possible, and I would ask that all of the senators, if possible, be here, for the reason that if they do not understand this statement as I make it, it is going to be extremely difficult to follow the proof under these two articles or to see the application of perjury, if any is proven, was committed. The reading of article 25 in itself is not particularly plain, and I think in this statement I can explain so that every one may understand wherein we claim a crime was committed. I will first state to you what the facts indicated were, and then state what Mr. Schively swore to as to these facts when he was called before the grand jury in Spokane county. In that way I think the matter can be made plain by first presenting to you, and that will be the order of proof, what the conditions actually were—what Mr. Schively must have known they were, and his relations with the company—and then prove what he testified to when called before the grand jury at Spokane. This company was a live stock insurance company; was organized in December, 1904—the month preceding the meeting of the legislature in 1905. There wasn't much business done at the time, and during the session of 1905 (perhaps some of the members who were here at that time will remember) there was passed a law providing for the organization of such companies, and that

this company went ahead and did business as a live stock insurance company during the years 1905 and 1906, and went into the hands of a receiver July 2, 1907. Among its organizers and trustees up until the time that Mr. Schively became a member of it was a man by the name of E. R. Ward, who will testify here; J. B. Shrock, S. G. Copeland, and two or three others; W. J. Walker, F. H. Hilliker, and W. M. Hunter. The company was located and doing business in the city of Spokane. Mr. Ward was president of the company, and the other offices of the company were scattered among Copeland, and Schrock and Walker; vice-president, secretary, and treasurer, and so on. This was a mutual company, by which each of the members, by taking out a policy, became a member of the company, giving them the power to meet as trustees and do the business of the organization. The trustees did not receive any salary. They determined among themselves that they would work on the basis of millage as to what they should receive. During the summer of 1906, up to before Schively became connected with this company, most of the trustees were receiving a millage of three mills on every dollar's worth of business, insurance written, so long as the gross amount of insurance written did not amount to over \$200,000.00. If it amounted to over \$200,000.00, they did not receive any compensation for anything above that amount. In other words, they could not receive over \$600.00 a month—that is, counting three mills to the dollar. During the summer of 1906, Schively met Ward, first down at Portland, and intimated to Ward that he would like to become a member of this company. At that time Mr. Ward was satisfied with his arrangements with the company, and did not like to sell out, and told Mr. Schively so at the time. Schively came to Spokane on the 7th of July, 1906, and met Ward again, who at that time was still president of the company, and always had been, and they brought up the subject again of Schively becoming a member of that company; and at that time Ward had become dissatisfied with conditions in the company and his health was not very good, and he had had some trouble with the other trustees with reference to the amount of commissions being accepted and paid. But, to make a long story short, he and Schively in their meeting there and their talk on the street (Riverside avenue) finally went to the hotel and to the office, and finally agreed that Schively should buy Ward out, and should pay him \$1,200, payable in three promissory notes of \$400.00 each, due in thirty, sixty, and ninety days, and that Ward should resign as trustee and step out of the company and recommend to the other trustees of the company that Schively be put in his place, and be made president of the company and receive all the emoluments that were coming to Ward. His salary at that time on this millage basis amounted to about \$600.00 a month. They were writing enough business at that time to make his job worth about \$600.00 a month, and he so stated to Schively. Schively agreed to that proposition, and he asked Mr. Ward to see the other trustees of the company and see if that could be arranged. He did meet with the other members of the board (Schrock and some of the others) and they said to him if Mr. Ward resigned

and went out, they would be satisfied to take Mr. Schively in. Consequently, a couple of days later, on the evening of the 10th of July, 1906, they had a board meeting of the trustees of the Live Stock Company and the matter was again discussed before the board, and they were satisfied if Mr. Ward resigned that Mr. Schively should take his place. At that board meeting the transfer was made, and Mr. Ward tendered his resignation and it was accepted. Among the directors who were present at that meeting there were Copeland, Shrock, Ward, Walker, and Schively himself. The three notes in question were drawn—three promissory notes, executed by Schively for \$400.00 each—and were delivered to Ward at that meeting, and Mr. Schively was taken into the company, but did not furnish his bond or take the oath of office till a few weeks later, or on August 4th. The transfer was made that evening, and I want you to bear in mind this agreement with Ward to take Ward's place, and the execution of these notes at that meeting. I will refer to it later on. Schively became president of the company and remained president until about October 8th, some three months later. During that time he received his commissions, the sum of about \$2,245.00—the exact amount, I think, is \$2,245.60 during those three months. He was present there something like between three weeks and a month; that much of his time was spent in the services of the company. Ward took these notes that were given to him and went to the Fidelity National Bank and borrowed some money there and put these notes up as collateral security. He, however, showed the notes to his wife before he put them up as collateral, so that she would understand it, and she remembers the incident very distinctly, and, by the way, Mrs. Ward had been employed in the office of the company for some six or eight months before that, and she is familiar with the entire transaction. It was understood at the meeting that evening that this \$400.00 per month for three months was to be paid out of whatever commissions that would be coming to Schively as president. The other members of the board of trustees in a way took the responsibility of helping Ward out. Schively didn't have any financial responsibility especially, and they were acting more as a matter of accommodation to see that from the money coming to Schively that \$400.00 was transferred to take up these notes. As I have stated, Schively received about \$2,245, and \$1,200 of it went at the rate of \$400 a month to the bank, and we have a check here showing that the money was paid to take up the notes he had given Ward. Along about the 8th or 10th of October, Schively sold out to another man by the name of Bennington—but that has nothing particular to do with this case. Something like eight or nine months later the company went into the hands of a receiver. These are the facts which we will prove, and we will prove this by all of the witnesses that knew everything about it, so there is absolutely no question but what I have stated to be the facts are the facts. Now along last March—about the 10th of March—the grand jury was impaneled in Spokane county. It had jurisdiction to inquire into any offenses that might be committed



in Spokane county, and proceeded with its investigation. Many complaints had been made to the grand jury with reference to this Pacific Live Stock Company. The reports came in that they had failed, owing large sums of money in unpaid claims, and the report came in that while these claims were unpaid, the officers of the company were still being paid something like \$2,500 or \$3,000 a month salary, and permitting the claims to go unpaid. The grand jury subsequently took up the investigation of the affair and proceeded to investigate to find out whether any of the money of the company had been embezzled, either by its officers or employees, or any one else, as it had a right to do. But in that connection I will read to you now the language of the article:

It then and there became a matter material to said investigation that the said witness, the said J. H. Schively, on or about the 10th day of July, 1906, entered into an agreement or contract, or had an understanding, with E. R. Ward, said E. R. Ward then and there being the president and trustee of said Pacific Live Stock Association—or with said E. R. Ward and J. B. Schrock, W. J. Walker, F. H. Hilliker, F. G. Copeland, and W. M. Hunter, they being officers of said company, or with any of them—whereby said E. R. Ward should resign as president and trustee of said incorporation in favor of said J. H. Schively and said J. H. Schively should be elected the president and trustee of said corporation in the place instead of E. R. Ward in consideration of the payment by said J. H. Schively to said E. R. Ward of the sum of \$1,200; whether said E. R. Ward on or about the tenth day of, July, 1906, so transferred or assigned to J. H. Schively any interest, rights or privileges in said corporation or to the revenues, commissions or millage derived therefrom, or any part thereof for any sum of money or for any consideration whatsoever; and whether the resignation of said E. R. Ward as president and trustee of said corporation on or about the date aforesaid, and the election of said J. H. Schively as president and trustee of said corporation in the place and stead of said E. R. Ward was due to or in pursuance of any agreement, contract or understanding between said E. R. Ward and said J. H. Schively, or between said Ward, Schrock, Walker, Hilliker, Copeland, and Hunter, and said Schively, or on account of any consideration whatsoever flowing or to flow from said J. H. Schively to said E. R. Ward; and whether said J. H. Schively, on or about said last-mentioned date, executed and delivered or caused to be delivered to said E. R. Ward, directly or indirectly, three certain promissory notes for \$400 each, each payable to said Ward or his assigns in thirty, sixty, and ninety days, in pursuance of said agreement, contract or understanding or at all; and whether the said J. H. Schively was thereafter with his knowledge or consent charged with three items of \$400 each, on account of the payment by said Schively or by said corporation for the benefit of and by the knowledge and consent of said Schively of the sum of \$1,200 to said E. R. Ward and his assigns, in payment of said three promissory notes of \$400 each; and whether thereafter the said J. H. Schively as a duly authorized officer of said corporation for his benefit and by his authority and with his knowledge and consent, drew three checks for \$400 each in favor of said E. R. Ward or in favor of the Fidelity National Bank, of Spokane, for the use and benefit of said E. R. Ward or his assigns in payment of said three promissory notes of \$400 each; and whether said checks drawn as aforesaid were at the time of the drawing thereof, or at any time, charged to the account of said J. H. Schively upon the books of said corporation by the authority and with the knowledge and consent of

said J. H. Schively; and whether said J. H. Schively during the months of July, August, September, and October, 1906, and while president and trustee of said corporation, was paid a salary of \$400 per month for his services as an officer of said corporation; and whether said J. H. Schively received any other compensation whatsoever, directly or indirectly, for his services as such officer.

We will prove that he received his salary on the basis of insurance written. Now, Mr. Schively was called before the grand jury, who were empowered to administer oaths, and the oath was administered to him to tell the truth. I will read to you the statute on perjury:

Every person who, having taken an oath that he will testify, declare, depose, and certify truthfully before any competent tribunal, officer or person, in any of the cases in which an oath may by law be administered, wilfully and contrary to such oath, states as true any material matter which he knows to be false, is guilty of perjury.

When he was called before the grand jury, in substance, he testified to this: *First*, he testified under oath that he did not have any agreement with Mr. Ward with reference to taking Ward's place in this company; he testified, *second*, under oath that he did not execute to Mr. Ward, or to any one else, three notes or any notes for the purpose of paying him for the position which he was to receive from him; he testified, *third*, that he was hired upon a flat salary of \$400 per month, and that his salary was not to be paid on the basis of commissions or in any other way than as a straight flat salary; he testified, *fourth*, that he did not receive as president of that company any sum greater than \$1,200 or \$1,300 during the three months he was there. He testified that no notes or checks were issued by the company while he was president in favor of the Fidelity National Bank, or anybody else, for the purpose of taking up these notes which he had prior executed to Mr. Ward, notwithstanding the fact that we will introduce in evidence here one of these checks which was drawn by the company to take up one of these notes, and which was signed by Schively himself. Those are the four or five material questions upon which we claim Mr. Schively took a false oath, and which we have assigned perjury in this case. We will produce here the witnesses who are familiar with this association, the officers who participated in this agreement and who were present when Mr. Schively was made a member of this company. We will produce here the checks with which these three notes were paid. We will prove that the notes were executed by those who were present and saw them executed and know that they were in existence, and were the checks that were used to pay the notes. We will prove that Mr. Schively was receiving this salary continuously from the company on the basis of millage and we will produce here the checks, showing he did receive the money and the sums he received. We will then produce here the grand jurors who were present at the time he testified under oath, as I have detailed before, who will prove to you, I think, beyond any question of a doubt, that he did testify as I have stated, that there was no agreement between himself and Ward—that there were no notes issued by himself to Ward, that he never paid the bank anything

for the notes, that he got a flat salary of \$400.00, and did not get any millage or anything else. When we have proven that, gentlemen, as we hope to do, I think we will be entitled to a judgment of conviction at the hands of the Senate. It occurs to me that I have stated fully the entire proceeding, and in the event that I have overlooked anything, I will ask the privilege of stating it, but I do not imagine that I have anything further to offer.

[Whereupon a recess for ten minutes was taken.]

BY THE PRESIDING OFFICER: Do the managers have anything additional to offer in the way of an opening statement at this time?

BY MR. MANAGER EDGE: No, sir.

BY THE PRESIDING OFFICER: Does the counsel for respondent have any opening statement to make at this time?

BY MR. ISRAEL: No.

BY MR. MANAGER EDGE: We will call Mr. E. R. Ward.

E. R. Ward, a witness produced on behalf of the complainants, after being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. EDGE: Q. State your name, please.

A. E. R. Ward.

Q. Where do you live, Mr. Ward?

A. Spokane.

Q. State what your first connection with the Pacific Live Stock Association was.

A. I was president of the company.

Q. Was you one of the organizers of the company?

A. I was one of the organizers of the company.

Q. Were you connected with the company during the spring and summer of 1906?

A. Yes, I was until the 10th of July; I then tendered my resignation and left the company.

Q. What office did you hold during the spring and summer of 1906?

A. I was president of the company.

Q. Do you know Mr. Schively—Mr. J. H. Schively?

A. I do.

Q. Did you have any conversation with him during the spring and summer of 1906 with reference to his taking your interest in the company?

A. I did.

Q. State where and when you had the first conversation.

A. Why, I am not absolutely confident as to just the date it was—just as to the day—but it was about the 8th or 9th of the month when I talked these things over with Mr. Schively in Spokane.

Q. What month?

A. In July, 1906.

Q. Did you have any conversation with him at all prior to that time with reference to the same thing any place else?

A. I had some conversation in Portland in regard to his expressing his desire to get into the company, and be one of the officers of the company, but no talk in regard to taking my position, or anything of that kind, at that time.

Q. There was nothing done at that time?

A. No, sir.

Q. Where did you meet him in Spokane, if you remember?

A. Why, I met him in that connection, in the Fernwell building, in the office of the Pacific Live Stock Association.

Q. Just state what was said there by each of you, as near as you can remember.

A. Well, we talked together, and we went out of the office down on the elevator, and if my memory serves me we went down Riverside to the corner of Howard, and down to Spring, and up to the Hotel Holliday.

Q. State whether or not any agreement was made there, and if so, what it was?

A. If I remember right, I told Schively I thought of resigning from the company, and we talked on about it. He said he would like to take my place, and I told him there were several parties who had been talking with me about it, but I wanted somebody, if I did resign, that would be agreeable to the balance of the board. We talked along about it, and he wanted to know what I wanted; and I don't remember just exactly what I said; I think, however, I spoke about one party that said that if I would give him time to pay it, he would give me \$2,000. Mr. Schively said that that was more than he would want to pay, but that he would be willing to pay \$1,000. He also said that if I was willing to give him time to pay the amount—if he could take my position in the company, and if I would resign in his favor—he would give me \$400 a month for three months. I spoke up and said that that would be \$1,200, and he said, "Well, I am willing to give you \$1,200, if you will resign in my favor," and we walked around to the hotel and sat down there and talked about it a while. I said I would present the matter to the balance of the board, and if it was agreeable to them it would be to me. He said, "All right, we will call this a deal, if it is agreeable to the board." We went back to the office again. If I remember right now, I talked with the balance of the officers—Mr. Shrock, Mr. Hunter, and Mr. Copeland. They were all officers of the company.

Q. Was anything said at that time in reference to you notifying the other member of the board in line with the tentative agreement you had with Mr. Schively?

A. Yes; Mr. Schively asked me to talk to the balance of the board, and see if they were willing that he should take my place, if I resigned in his favor. He said, of course, he would not want to come in unless they were willing. I put the proposition to them, and they expressed themselves as being in favor of Mr. Schively, if I insisted on resigning.

Q. When was the matter next taken up?

A. That was either the 8th or 9th. I would not be positive whether it was the day before I took up my resignation to the company, and Mr. Schively was elected to fill the vacancy; it was either one or two days previous to the 10th—I am not sure of that.

By MR. ISRAEL: Q. What month?

A. July, 1906.

Q. When was the matter next considered by the company?

A. We talked it over at intervals during the time—during the day—and on the evening of the 10th, at 7 or 8 o'clock, we had a meeting of the board of directors and the matter was discussed at that meeting, and I got up and made a statement to the board regarding the proposition of Mr. Schively to me, and of our prospective deal; of my intention to resign, and that I would resign in Mr. Schively's favor—would be in favor of Mr. Schively taking my place, if it was agreeable to them. But one after the other of the members expressed themselves in this way:

They said if I insisted on resigning, that Mr. Schively could take my place, but I remember clearly they insisted on my staying with it.

Q. Who was present at that meeting?

A. Mr. Schrock, Mr. Hunter, Mr. Copeland, Mr. Schively, and Mr. Paul Schellenburgher, and I am not positive but Mr. W. J. Walker was there; it runs in my mind he was, but I am not sure. I think he was, however.

Q. State whether or not you tendered any resignation at that meeting?

A. I did tender it, and handed in my resignation.

Q. Was the consideration that you were to receive discussed at the meeting?

A. Why, yes, it was discussed with Mr. Schively and I—I do not know that it was discussed at that meeting. I think, however, it was, when I come to think of it, because we discussed the matter of Mr. Schively's paying me the amounts of \$400—meaning \$400 a month—and that if he took my position, while each officer drew the same millage, he should pay this off and then have some money left each month.

Q. State whether or not any notes were drawn and signed at that meeting?

A. There were—three notes: One drawn for thirty days, one payable in sixty days, and one payable in ninety days, each for \$400, making a total of \$1,200.

Q. In whose favor were they drawn?

A. In my favor—E. R. Ward.

Q. By whom were they signed?

A. They were signed by J. H. Schively.

Q. What became of those notes, Mr. Ward?

A. A few days later I placed them in the Fidelity National Bank. I needed some money for a deal, and I borrowed \$800, and I placed them in the Fidelity National Bank. I borrowed the \$800, with the understanding with the bank that as the notes were paid off they would place the amount to my credit.

Q. You put the notes up as collateral security for your loan?

A. Yes.

Q. Between the time you received these notes at the meeting and the time the notes were put up to the bank, did you show them to any person?

A. I showed them to my wife, as I remember. I always talk over business matters with her.

Q. Did you notify the officers of the company that you had placed them with the bank?

A. Yes, I told Mr. Schrock, the general manager.

Q. I will ask you if you recognize this book that I hold here? [*Indicating.*]

A. [*Examining book*] Yes, I do; that is the minute book of the Pacific Live Stock Association.

Q. I will ask you if you recognize the signature shown on page 75?

A. I do.

Q. I will ask you if you have ever examined pages 74 and 75?

A. I have not for a long time, but I remember that I did at the time they were drawn.

Q. I will ask you what they purport to be?

A. They are minutes of the board of trustees held on June 14th and July 10th.

Q. What year?

A. 1906.

Q. The one I am indicating now, is that held on July 10th, 1906?

A. Yes; the meeting of the board of trustees I have referred to the night I tendered my resignation, and Schively was elected to fill the vacancy.

BY MR. MANAGER EDGE: I will offer this in evidence, subject to the condition that it may be withdrawn and a copy substituted, for the reason that these books are now in the custody of the grand jury first, and they got them from the receiver of this company.

BY THE PRESIDING OFFICER: The copies will be allowed. There will be no objections to that.

[*Mr. Israel examines books.*]

BY MR. MANAGER EDGE: This will be offered in evidence.

BY THE PRESIDING OFFICER: You had better mark it as an exhibit.

BY MR. MANAGER EDGE: This will be "Article 25, Complainants' Exhibit No. 1." [*Reading*] "The office of Pacific Live Stock Association, 607-11 Fernwell, Spokane, Wash. Special meeting, July 10th, 1906. Meeting called to order by President Ward. Trustees present: E. R. Ward, J. B. Schrock, W. M. Hunter, S. G. Copeland. Whereas, E. R. Ward desires to resign his position as president and director of the Pacific Live Stock Association, the following was presented by E. R. Ward: 'I, E. R. Ward, resign as president of the Pacific Live Stock Association in favor of J. H. Schively, who will hereby be appointed in my position as president and trustee. This resignation is tendered on account of ill health.' Signed, E. R. Ward. Motion made by J. B. Schrock and seconded by W. M. Hunter that E. R. Ward's resignation be accepted. Motion carried. Motion made by S. G. Copeland and seconded by J. B. Schrock that we elect J. H. Schively as trustee and president of this association to fill the vacancy caused by the resignation of E. R. Ward. Motion carried unanimously. Motion made and seconded that, 'Whereas, The resignation of E. R. Ward has been tendered and accepted as president and trustee of the Pacific Live Stock Association, and, there being no officer qualified, it is said, we hereby authorize J. B. Schrock to sign checks and other instruments of like manner until E. R. Ward's successor has been duly qualified. Motion carried. There being no further business, the meeting was adjourned in due form. Signed, J. B. Schrock, Sec'y."

Q. Now, Mr. Ward, how did the trustees determine the salary that each of them should receive?

A. They were determined by a millage—by so many mills on all the business of the company written. None of the officers received a salary—flat salary. If the company wrote any business, they would get a certain millage of all the business written.

Q. Immediately prior to Mr. Schively buying out your interest, how was your salary computed and how much did it amount to?

A. It amounted at that time to about \$600 a month.

Q. And in what way was that amount arrived at?

A. They were to draw three mills on each dollar of all business written up to \$200,000, and anything above that they were not to draw any mileage on it.

Q. 200,000 shares?

A. Yes—\$200,000 worth of business.

Q. Three mills on \$200,000 amounted to \$600 a month?

A. Yes, sir.

Q. Most of the trustees received three mills?

A. Yes, I believe they did.

Q. Did Mr. Schively know at that time that was the way that your salary was determined?

A. Yes, sir, he did.

*Cross-Examination—*

BY MR. ISRAEL: Q. You say you had had some conversation in Portland before the 8th or 9th of July regarding Mr. Schively's going into the company?

A. Yes, we did.

Q. When was that?

A. I do not remember just what time it was; it was several months previous to that.

Q. Can you fix it approximately?

A. It strikes me it was some time the fall before—I am not sure—that I met Mr. Schively in Portland. I was with him off and on several days, and we talked, of course, at various times, about the affairs of the company and the progress we were making, etc., and he expressed himself as desirous of getting into the company as one of the officers or the company at that time; but nothing was said about my resignation.

Q. Nothing was said about your retiring at that time?

A. No, sir.

Q. And if I understand you correctly, at the first time there was not anything that passed between yourself and Mr. Schively regarding your retirement from the company until about the 8th or 9th of July, 1906, up in Spokane?

A. Yes.

Q. And if I understand you correctly, at this time Mr. Schively suggested that he would buy you out?

A. Yes.

Q. You stated you could get two thousand dollars?

A. I said there was a party who had been talking with me and who had suggested he would give me two thousand dollars if I would give him the time to pay it.

Q. Prior to that time you had made no intimation to Mr. Schively that you wanted to get out of the company?

A. Not in selling out or anything of the kind.

Q. Well, I mean getting out of the presidency or active management of the company?

A. No, sir; I do not think I ever had.

Q. That is, excepting there had been a conversation in Portland many months before, at which your business had been discussed, and Mr. Schively had spoken of the fact that he would like to get into the company? And your relations with the company on the 8th or 9th of July were cordial and friendly?

A. Yes.

Q. There was no friction or bad blood or anything at that time between you and the balance of the company?

A. Oh, we had differences at the different board meetings in regard to different matters a great many times.

Q. You had attempted, or was it suggested to you, to get out of the company?

A. No, not in any way.

Q. Now, if I understand your testimony correctly, when you intimated to them you were going to sell out to Mr. Schively, they requested you to remain in the company?

A. They did.

Q. They said Mr. Schively would be acceptable in case you did not remain?

A. Yes.

Q. And this conversation you had after you told Mr. Schively you would take the matter up with the board?

A. Yes, sir.

Q. And it was in this same meeting, as shown in the minutes of the meeting of the association?

A. I had talks with different trustees previous to the meeting.

Q. How long before the 10th of July, fixing the 10th of July as the time you resigned, will you fix now the conversation with Mr. Schively about buying you out?

A. I think previous to the 8th or 9th—it was not long before the meeting.

Q. There had been discussions between you and other members of the board regarding your selling out between that date and the time of the meeting?

A. Yes, sir.

Q. Mr. Schively told you he would give you four notes payable in 60, 90 and—

A. It was three notes—\$400 each—30, 60 and 90 days.

Q. Where are those notes?

A. I don't know.

Q. When did you see them last?

A. When I put them in the bank.

Q. When was that?

A. That was a few days after I received them.

Q. Some time in July, 1906?

A. Yes; possibly eight or nine days after I made the deal I put them in the bank.

Q. Did Mr. Schively come to your company at Spokane prior to this conversation on the 8th or 9th, when you offered to sell out to him, with the intention of joining the company in any other capacity?

A. Not that I know of.

Q. Did he come there for the purpose of becoming manager of the company?

A. No, sir; I do not remember that he did; he might have, but not to manage.

Q. You would remember if that was the fact.

A. I was out in the country most of the time myself; possibly I would.

Q. Mr. Schrock was manager?

A. Yes, at that time.

Q. Your feeling was not most friendly towards Mr. Schrock at that time?

A. I cannot say but what it was friendly, when I—



Q. You were attempting to get rid of him and get somebody else in as manager?

A. I thought we ought to have a more experienced man as manager of the company.

Q. You so expressed yourself?

A. I might have to Mr. Schively.

Q. You had looked about with the intention of getting somebody else?

A. I do not know that I did. We talked it over at different times.

Q. You individually had been casting about to get a new manager in place of Mr. Schrock?

A. No, sir; that was Mr. Hilliker.

Q. You made no effort to get Mr. Schrock out?

A. No, sir. It was my active efforts to get Mr. Hilliker out. We thought he was extravagant and we wanted to get him out.

Q. Then you took that up with Mr. Schively?

A. Yes—the Hilliker affair.

Q. Who was to take up the question of getting another manager in place of Mr. Schrock—Mr. Schively?

A. No, sir; I do not remember that I ever planned anything like that with Mr. Schively. I do not remember of it. I might have had some talk with him.

Q. Did you ever have any correspondence with him with regard to it?

A. I do not remember. I had some correspondence with Mr. Schively when I was in Arizona, and different places, regarding the company's business, but I do not know whether I ever had any conversation or correspondence regarding Mr. Schrock.

Q. Didn't you ever pick out a man with Mr. Schively that you thought would be a likely man for the place?

A. No, sir; not that I call to mind.

Q. Are you positive of it?

A. I am quite positive.

Q. You are very positive of that? Did you ever discuss with Mr. Schively any man that would be more proper for the place or talk about investigating him or getting him into the company prior to July, 1906?

A. I do not know as I did.

Q. You are quite positive about that also?

A. I am.

Q. You are quite positive you were not trying to get rid of Mr. Schrock, and was not asking Mr. Schively to aid you in that.

A. I had confidence in Mr. Schrock; only I thought that he did not have executive ability enough to handle the office; that is the only reason I objected to Mr. Schrock. As far as his being a good man, we did not object to that—only we thought that he did not have the ability to handle the office with as much business as we were writing.

Q. Will you look at this letter? [*Handing letter to witness; witness examines letter.*]

Q. Did you write that letter?

A. I did not; no, sir.

Q. Did any one write that letter for you?

A. My wife has written this letter, I think.

Q. Look at the signature; whose signature is it?

A. That is my wife's; my wife has signed my name.

Q. With your authority?

A. I do not remember. She used to do lots of writing for me. Without a doubt she did.

Q. Would she write a letter discussing matters of your insurance company and its manager, and ousting people and getting other people in place of them without your knowing it?

A. [*Witness reads letter.*] I remember this letter very distinctly now.

Q. You were trying to get Mr. Schrock out, were you not?

A. I was not trying to get Schrock out; no, sir—

Q. In order to run a man in and get him acquainted with the rest of the force, so it would not hurt Schrock's feelings, and make him manager?

A. Yes, Mr. Schively suggested this man—

Q. Did you tell me awhile ago that Mr. Schively never suggested anybody?

A. That had gone out of my mind.

Q. How much more has gone out of your mind?

A. I had forgotten entirely about that.

By Mr. ISRAEL: I will ask to have this marked "Article 25, Defendant's Identification A."

By Mr. MANAGER EDGE: Are you offering that in evidence now?

By Mr. ISRAEL: No, sir.

By Mr. MANAGER EDGE: You are having it put into the record. You are asking the stenographer to mark it.

By Mr. ISRAEL: The record will show that I have had a number identified. I am having this identified by the figures on the back "Article 25, Defendant's Identification A." When I offer this in evidence, the record will undoubtedly show that I had this identified by having the figures put on the back and so forth. When I offer this in evidence the record will undoubtedly show that identification No. A went into the record, and thereby we will identify the article in evidence as the article which was presented to the witness. This is only for the purpose of identification. However, if you will permit me, it would not be proper in a court of law to offer this at this time on cross-examination; but if you will not object to it, I will introduce it in evidence.

By Mr. MANAGER EDGE: If you are going to offer it at any time, you may as well enter it now.

By Mr. ISRAEL: Have you any objections to it?

By Mr. MANAGER EDGE: I would like to see it before it goes in.

By THE PRESIDING OFFICER: The chair understands that no identifications presented by the defendant since I have entered the chair have been offered in evidence, but have simply been offered as identifications.

By Mr. ISRAEL: Yes.

By Mr. MANAGER EDGE: It may be possible you might not want to offer this later on, so there is no use offering it now.

By Mr. ISRAEL: I am going to offer it in evidence and it is going in as evidence.

By Mr. MANAGER EDGE: I object to it on the ground of its materiality. It simply encumbers the record. It has nothing to do with

anything that is on trial here. I submit it to the court. If the court can find anything material in it, it can find more than I can.

By MR. ISRAEL: It is a matter of testing the credibility of this witness. [*Paper handed to the presiding officer.*]

By THE PRESIDING OFFICER: I see here there is something about the qualification of Mr. Schrock, and the evidence having gone in as to whether or not the witness was interested in the removal of this Mr. Schrock, and, the letter being offered to impeach his evidence, it is admissible and will be entered.

[*Marked "Article 25, Defendant's Exhibit A."*]

By MR. ISRAEL: [*Reading letter.*] "Yuma, Arizona, April 14, 1906. Mr. J. H. Schively, Olympia, Washington: Friend Schively—I am in receipt of yours of the 28th ult., with Hobson's letter enclosed. I think he is certainly the man for the place. The annual meeting was held on the 2d instant, regardless of their written agreement to postpone. They seem to have had a quiet affair. All old officers re-elected. Our books have not been audited since last July, and should be at once. Don't you think it a good idea to suggest this to the association and also suggest Mr. Hobson as being a good man to do the auditing. In this way he will have an opportunity to meet all the board and we can work him in as general manager without feelings on the part of Mr. Schrock. If you have not already had an appointment with Mr. Hobson, can you not arrange to have him meet you and me in Portland on Monday, May 30th. We start home in time to be in Portland on that date. If you can make this arrangement with Mr. Hobson, write me at 'Frisco not later than the 26th, care Palace Hotel. My health has improved, but I am not equal to the strenuous life which I have led the past year. I need be careful for several months yet. Mrs. Ward joins me in sending kindest regards to you. Very truly yours, E. R. Ward.

"P. S.—Should you fail to get me in communication at 'Frisco, you can address me at 308 South Tenth street, Portland. E. R. W."

Q. Now, just a moment ago, I believe, you told me that Mr. Hobson had not been suggested by Mr. Schively?

A. Yes, I did not know Mr. Hobson at all.

Q. Don't know him at all?

A. I say I did not know him at the time. I don't know that I ever met Mr. Hobson.

Q. But at the time you wrote this letter, April 14th, you did not know him?

A. Did know him?

Q. Did not know him?

A. No.

Q. And Mr. Schively had suggested him in the past correspondence?

A. That had entirely gone out of my mind. Mrs. Ward wrote that and I forgot entirely about Mr. Hobson being suggested.

Q. Do you know now Mr. Hobson's signature?

A. No; at the time Mrs. Ward wrote the letter I had been in Portland, but I had forgotten entirely about this letter as to Mr. Hobson—entirely out of my memory.

Q. You do recall, however, that you were engaged at that time with Schively in getting down under Schrock and removing him as general manager, don't you?

A. I remember now we talked about putting in this man Hobson, because we were just wanting a man that had an office experience to manage the office.

Q. Your memory was entirely at fault when you said you had not tried to get Schrock out of office?

A. Well, I had not tried to get him out of office—only to get some one in his place as general manager. It was agreeable to Mr. Schrock. He was perfectly willing we should get some one else.

Q. Let me hand you a letter written from The Dalles, Oregon, on February 23d, some three months before August 14th, by W. H. Hobson to Mr. Schively—that you refer to in your letter from Arizona—and see whether his statement that you had met him in The Dalles, Oregon, and had talked with him is true or not. [*Hands paper to witness.*] Now, did Schively introduce Hobson to you, or did you meet Hobson and introduce him to Schively?

A. I never introduced him to Schively. I don't remember of meeting Hobson at all. [*Peruses letter.*] I have no recollection of meeting Mr. Hobson at that time.

Q. Does this statement refresh your memory: "I acknowledge receipt of your favor of the 20th ultimo; I had been advised by Mr. Ward, whom I met personally in The Dalles a short time ago, that I might expect a communication from you." Have you refreshed your memory as to the meeting with Mr. Hobson in The Dalles before April 14th?

A. As I remember now, Mr. Schively wrote and suggested Mr. Hobson, and I did not know Mr. Hobson or any one that lived in The Dalles; I was down there and I don't remember of having met Hobson. I might have met Hobson, but I don't remember of seeing Hobson.

Q. You were in The Dalles?

A. I was in The Dalles, yes.

Q. You were in The Dalles February, 1906?

A. I don't remember what date; I was down there to look after the company's interests.

Q. Before you went to Arizona?

A. Yes, sir.

Q. The spring before you went to Arizona?

A. I don't remember what time of the year I was there now.

Q. After the holidays—it occurred before you went to Arizona—you were in The Dalles before you went to Arizona?

A. How is that?

Q. After the holidays, and before you went to Arizona, 1906, you were at The Dalles?

A. I don't remember after the holidays. I went to Arizona in February.

Q. Well, you did go there in February?

A. Yes, along the last of February.

Q. Along the last of February. Then you were mistaken?

A. I may be mistaken on that, because I don't remember of talking with this man Hobson at all. I don't remember that.

By Mr. ISRAEL: I will have this letter marked for identification, please, "Article XXV, Defendant's Identification 'B'." [*The paper was so marked.*] Now, gentlemen, I cannot make any use of this, without

you admitting the signature of Hobson. I will have to prove it first, and so I will not offer it without you do so.

Q. Well, Mr. Ward, let's take a fresh start. Don't you think now that it is barely possible that John Schively came to Spokane in July of 1906, for the purpose of himself becoming manager in place of Schrock?

A. No, I don't remember it that way.

Q. Well, would you state that that is not true now?

A. To my knowledge, it is not.

Q. It is not true to your own knowledge as your knowledge now is?

A. No, sir.

Q. But it might be true?

A. That might have been his intention, but I did not know it at the time.

Q. Your memory will serve you, then, that you had not made that kind of an arrangement with Schively?

A. No, I don't remember making any such arrangement with Schively.

Q. Will you testify now that you had not agreed with Schively that Schively should be the manager rather than Hobson?

A. No, I don't.

Q. Now, didn't you get Schively over there for the purpose of becoming manager of your company?

A. No, I had not.

Q. Well, what is your testimony as to whether or not you did or did not?

A. Well, I don't remember of making any previous arrangement.

Q. But you won't say that it is not true?

A. Why, that may have been his intention, but I don't remember of my making any previous arrangement with Mr. Schively before he came there.

Q. If it had ever been your intention, you don't now remember?

A. No, sir.

Q. That is as far as you want to go with the matter?

A. Yes.

Q. Now then, what is your recollection as to having met Schively on the street and proposed to him yourself that you would sell out for a bonus and get out of the company instead of him making you a proposition?

A. Why, it is just as I told you. We talked the matter over as we went around from the office to the hotel. I told him I was going to resign and get out of the company on account of my health and different things, and he said that he would buy me out and would like to take my place and wanted to know if I would resign in his favor.

Q. Now then, is it not a fact that after that conversation between you and Schively—in which nothing occurred except the proposition that you wanted to get out of the business, that you were dissatisfied with your associates, that they had not treated you right, and your health was not good—Schively asked you to wait until he could confer with the board of directors and find out how they felt about your resigning?

A. No, sir; it was not.

Q. And didn't he go to the board of directors and represent that you wanted to get out of the company?

A. He might have gone to the board of directors and talked with them. I have no doubt he did; but our arrangement was that I was to

talk with the board of directors and find out if they were satisfied with Mr. Schively to take my place.

Q. Is your recollection clear on that?

A. Yes, sir; it is.

Q. No possibility of your memory being wrong this time?

A. Not on that; no.

Q. You have a pretty bad memory, have you?

A. I generally have a pretty good memory; yes, sir.

Q. But not a good memory today, though?

BY MR. MANAGER EDGE: I object to that, if the court please. That is improper. Counsel knows it.

Q. Now, Mr. Ward, who was present in the room when these three notes were drawn by Mr. Schrock?

A. Well, Mr. Hunter was there, and Mr. Schrock, and Mr. Copeland, and Paul Shallenberger, and Mr. Schively, and I am not sure whether Walker was there or not.

Q. Are you sure that Schively was there at the time the notes were prepared?

A. I am positively sure that Mr. Schively was.

Q. You are positive of that?

A. Yes, sir.

Q. What makes you positive of it?

A. Mr. Schively was at the right side of me at the table. The whole matter was—we were all talking together.

Q. Who signed the notes first?

A. Mr. Schively is the only man that signed the notes that I have any recollection of.

Q. Well, now, is this going to be a case of recollecting or knowledge? Did any one else sign those notes besides John Schively?

A. Not to my memory.

Q. Well, you will not be more positive than that?

A. I would say there was not any one that signed the notes but Schively. There might have been some of them—the company might have put a stamp on them or something of the kind, but I don't know that they did. The only thing I remember, I know Mr. Schively gave me his notes as a personal transaction between him and I.

Q. Were not those notes signed by this company, by the officers of this company?

A. They were not, to the best of my recollection.

Q. Do you want this Senate to understand that John Schively's signature was collateral for \$800 in any bank in Spokane?

A. Well, it was not necessary that it should be. My signature endorsing the notes made them satisfactory to the bank. I put up other securities at the bank.

Q. Will you swear now to those circumstances positively, that the only signatures on those notes were Schively's?

A. I will swear to the best of my remembrance that that was the only signature on them.

Q. Where are the notes?

A. I don't know.

Q. When did you see them last?

A. I put them in the bank, and I suppose when Mr. Schively paid his notes he took them up.

Q. Didn't you see them after that?

A. Why, certainly not. No reason why I should see them.

Q. Do you know who paid the notes in the bank?

A. I don't. I know the bank was paid, and the arrangement was with the Pacific Live Stock officers that they were to see that these notes were paid out of Mr. Schively's income?

Q. Do you know who took them out of the bank?

A. I do not.

Q. Have you ever seen the notes since?

A. No, sir; I have not.

BY MR. ISRAEL: Gentlemen, have you these notes?

BY MR. MANAGER EDGE: No, we have not. We presumed Mr. Schively had them. We have not got them. If we had them, we would introduce them.

BY MR. ISRAEL: Why, didn't you have them in your grand jury room?

BY MR. MANAGER EDGE: Never have been in existence so far as we know since they were put in the bank.

BY MR. ISRAEL: This whole matter stands on the assertion of these notes having been given by John Schively.

BY MR. MANAGER EDGE: We will try this on the evidence, Mr. Israel.

BY MR. MANAGER MEIGS: Ask your client where the notes are.

BY MR. ISRAEL: I have asked him. He never has seen them, because we don't think they ever existed.

BY MR. MANAGER EDGE: I think you better proceed on the evidence, Mr. Israel.

BY MR. ISRAEL: Yes. If you have not got the notes, that is a surprise to me. I thought you had the notes.

Q. Then no one has seen these notes since they went into the bank?

A. I have not.

Q. What bank did they go into?

A. Fidelity National Bank at Spokane.

Q. Who was the cashier that discounted them?

A. Well, Lindsley was the man I did business with.

Q. Did Lindsley handle these notes?

A. He did.

Q. And accept them for the collateral security?

A. I had put other security in the bank. I don't remember just what it was now, but I had other securities there besides these notes.

Q. I know; who took the notes in? Who would be likely to have any recollection, or who made the note registry of the collaterals of this bank?

A. I think Lindsley is the man.

Q. What is his name?

A. I don't remember his initials.

Q. Lindsley; cashier of what bank?

A. I don't know that he is cashier now. Perhaps he was— Let's see, there was—well, Lindsley is the man that did the business with me. There is Brooks and Lindsley in there. Lindsley is the man, if I remember right, that I did the business with. It might have been Brooks at that time, because I have done business with both of them at different times.

Q. Well, now, I wish you would search your memory for a moment, and tell me whether it was Brooks or Lindsley you did your business with. It is quite important.

A. I am not sure—as my memory serves me, it is Lindsley.

Q. Who took the notes from you and allowed you to put them up as collateral, and took your notes—I suppose you put up your note for \$800.00?

A. Yes.

Q. Were these notes as collateral?

A. Yes, as collateral.

Q. With Mr. Lindsley; what bank?

A. With the Fidelity National Bank, Spokane.

BY MR. ISRAEL: Mr. Presiding Officer:

BY THE PRESIDING OFFICER: Mr. Israel.

BY PRESIDENT RUTH: Do you mean me?

BY MR. ISRAEL: Yes, sir. I wish a subpœna for Mr. Lindsley of the Fidelity National Bank of Spokane, to come and bring with him all note registers on loans and discounts and record of hypothecations, a subpœna *duces tecum*.

BY THE PRESIDENT: A subpœna will be issued. What is the best description you have got of Mr. Lindsley?

BY MR. ISRAEL: Mr. Lindsley, connected with the Fidelity National Bank.

BY MR. MANAGER EDGE: I think I can give you the initials. It is A. W. Lindsley. I think I know the man.

BY THE SECRETARY: What do you want issued?

BY MR. ISRAEL: Put it in this way: "To come and bring with you your registry of notes, loans and discounts and hypothecations for the month of July, 1906, together with any data in your possession showing the identity of persons who executed notes deposited as collateral in your bank during that month."

BY MR. LEE: Now, Mr. President, in this connection, I suggest, we don't object to the issuance of any subpœna, but rather than interrupt the examination of any witness, I think the chair ought to hold that counsel will issue the subpœnas and request their issue after the testimony is concluded.

BY MR. ISRAEL: Pardon me, your honor, the hour is late and you will have to catch some trains to do anything tonight.

BY THE PRESIDENT: The counsel can write out his orders and file them for issuance with the secretary, and they can be submitted without interrupting the witness.

Q. Now, Mr. Ward, don't you know as a matter of fact that Mr. Schively was not present at the time these notes were drawn up and executed at this meeting of that board at the time you testified?

A. I know that he was present.

Q. Don't you know that these notes were signed by your company?

A. No, sir; I do not.

Q. You say that your salary was on a millage basis?

A. Yes, sir.

Q. Will you tell the Senate what you mean by millage basis in all



its operations. Now, we all understand that a millage basis is a certain number of mills on each dollar of insurance premiums returned, but many of the senators may not understand the workings of a division on a millage basis. Now, all of your officers, you state, were on a millage basis of salary?

A. Yes, sir.

Q. Now, what was necessary for you to have to accomplish for each one to receive a salary on a millage basis. You had to have various agents in the state?

A. Yes.

Q. Those were your agents for the purpose of millage?

A. That is the way we started out; yes, sir.

Q. That is the way you started out? A certain set of agents' collections of premiums reported from those agents into your company were the resources from which your millage was ascertained?

A. Yes, but not when Mr. Schively went in. We had done away with the agents at that time and we were getting a millage for each one of the company—that is, it could not exceed \$200,000.00 each month. We got three mills; we were getting three mills on all business returned by the company and it could not exceed \$200,000.00 worth of business per month.

Q. All told?

A. All told.

Q. Then the millage on \$200,000.00 worth of business—

A. Would be \$600.00.

Q. And that \$600.00 would have to pay all three officers?

A. No, that would be for each officer.

Q. Then there was to be \$200,000.00 worth of business for each officer to give them \$600.00 each?

A. Well, if the company wrote \$200,000.00 worth of business the officers got \$600.00 a month.

Q. Divided among them?

A. No, sir—each one.

Q. Each one got his millage out of that business?

A. Three mills on all business returned, but not to exceed \$200,000.

Q. Well, how many officers were there drawing salary on a millage basis?

A. Five officers.

Q. Fifteen mills; one and one-half per cent., is that right?

A. Fifteen mills; yes, sir.

Q. One and one-half per cent. on all business?

A. No, I don't think they were drawing fifteen mills, because there was one of the officers had not been in very long. He did not get the three mills when he first started in, but started in on a lesser basis.

Q. Explain that to me, please?

A. That was Mr. Copeland. I think that he got one mill, the same as I got a mill or a mill and a half on the start, and then after a while it was raised to two mills, and then later on, the first of October, 1906, it was raised to three mills.

Q. What would be the occasion of raising it?

A. On the first of October, it was raised to three mills on all business returned and the officers paid all office expenses.

Q. You say general agents started at one mill and worked up to two; what made his services more valuable, increase of millage?

A. Because he could not get out and get business so well.

Q. Each man had to solicit his own business?

A. Each man acted in his capacity except the general manager and the general agent. We could not start out with many agents. It was hard to get business.

Q. And each man, acting as general manager, appointed his set of agents?

A. Yes.

Q. And got his millage on what his agents wrote, and the more active a man was the more money he would make?

A. Yes, that was it.

Q. Now when John Schively came into the company, what field agents did they turn over to Schively for millage?

A. The company was not doing business in that way then. At that time they had changed their plan of business.

Q. Oh, then he did come in on a flat rate salary?

A. No, it was a millage on all business written up to, and could not exceed, \$200,000.00 each. I would say some months we would write \$400,000.00 worth, and the salary could not run above \$600.00 a month.

Q. To each one?

A. To each one. That is the millage basis in that way. If they wrote only \$100,000.00 per month, they would only draw three mills on that amount—for instance, \$300.00.

Q. Each one draws three mills on it?

A. Yes, sir.

Q. So that under the old plan all that was deducted for millage salary out of all premiums earned by the company where they had independent agents and were independent agents themselves was three mills, but under the new plan the same business had to mulct a revenue of one and one-half per cent., or three mills to everybody?

A. I don't just exactly understand just what you mean.

Q. You understand that at the time John Schively was charged with having committed perjury before the Spokane grand jury that the Spokane grand jury claimed that they were trying to find out whether there had been any embezzlement committed with your company; you understand that, don't you?

A. Yes.

Q. All right. Now then, if I understand you rightly, under your first plan you would go in the field as a general agent, being an officer of the company?

A. Yes.

Q. You would appoint as many agents as you saw fit?

A. Yes.

Q. And on the business that you wrote and your agents wrote up to the amount of \$200,000.00 you would take three mills on each dollar as millage?

A. No, sir.

Q. What would you take?

By MR. MANAGER EDGE: Mr. Israel, I think perhaps I can put you right on that, as I understand from my investigation each trustee got three mills on all business that was written for the company by anybody up to \$200,000.00, and when the business amounted to more than \$200,000.00 written in a month, they did not receive any millage on what was over \$200,000.00.

A. Let me tell you so as to make you clear. In the first place, when we had to get business, it is very hard to get business and we wrote

business there at a lower rate and each officer got, if I remembered right—I would not be positive—I think it was a mill and a half on what business was written by the company. If we did not get any business, we had to pay our own expenses and did not get any salary, and each man went out as a general agent and got business and hired agents; and it was hard to get business, and for a month we did not do any business at all and it ran along that way until the annual meeting. We received our charter, I think, some time in April. I would not be positive as to the date. Then the millage was raised to two mills on all business written by the officers. Then it went on that way until October 1st, 1906, and in 1904, the latter part of the year—in 1905, rather, in the fall of 1905—we raised the millage to three mills and the expenses of the company offices were paid *pro rata* by each officer. It cost \$160.00-odd—\$66.00 out of me, as a rule, each month, from my income then. After October 1st, 1905, until I went out, I think the business was running that way. That is my recollection of it.

Q. Until October, 1905?

A. No, we started in October, 1905, and changed the business, each man getting three mills on all business written and paying the expenses of the office. Each man paid his *pro rata* of the expenses of the office, and that ran that way. There might have been some changes made the next spring. I don't remember what changes were made along the next spring. I think there was some change made before I went out, but I don't remember what it was now.

Q. Well, now, I don't understand it yet. I want you to give me an illustration. I may be dense. Now, we will take as an illustration—we will have you insure an animal for me and we will value the animal at \$2,000.00 and we will say the rate is three per cent., or \$60.00. Now there is a premium of \$60.00 that I pay to the company—a gross premium of \$60.00 for a year's insurance at \$2,000.00. Now, when that \$60.00 arrives at the office, does everybody take three mills of that \$60.00, or do they take three mills on my \$2,000.00?

A. Three mills on the \$2,000.00. Three mills is \$6.00 out of the \$2,000.00.

Q. Then everybody takes \$6.00 out of my \$60.00 for wages?

A. No, the company would not write any business at three mills nor three per cent. It was ten per cent., eight and ten, I think, in the first place, and then we raised it to ten and twelve.

Q. Now, Mr. Ward, what we are trying to get out is the way you figure this millage. If a man writes a policy at a value of \$2,000.00, on a policy, we will say, of \$2,000.00 on his animal, and you charge him ten per cent. to insure him, he will have to pay you \$200.00 insurance premium. Now, when that \$200.00 reaches your company's office, what you call millage of three mills is for each one of your officers to take what would be three mills on the \$2,000.00, or one and one-half, or ten times as much, or thirty mills, or three per cent. of the \$200.00?

A. In the first place, we would not write any horses for \$2,000.00.

Q. I can't hear; you will have to make me hear.

A. I say in the first place we would not write any insurance as high as \$2,000.00 on any one animal. One thousand dollars was our limit.

Q. Well, take any figure you want to.

A. And up until 1905—October, 1905—well, we drew a mill and a half on that \$1,000.00. That was a \$1.50 on a \$1,000.00 write-up. The premium was \$120.00. I believe possibly in the first place we wrote registered stock at ten per cent. That was a \$100.00 for carrying that insurance two years.

Q. On how much value?

A. On a \$1,000.00.

Q. All right. Now, having insured the animal for \$1,000.00 for two years, you get \$100.00 premium?

A. Yes, when we were writing at ten per cent. we would. We did not write very long at ten per cent.

Q. Well, while you were writing at ten per cent. Now when the \$100.00 came in, you say, with your figures, three mills on a \$1,000.00 is \$3.00, don't you. Then you take that \$3.00 out of the \$100.00 premium, don't you, each one of you?

A. We never took three mills out of a \$100.00 premium, because we did not write at ten per cent. at the time we were drawing three mills. We were writing at twelve and fourteen per cent.

BY MR. MANAGER EDGE: I think if the counsel will ask the witness what they did, he can probably in his own way tell you, but counsel is putting up an illustration to be as far removed from the actual state of facts as he can, and is asking the witness if that wasn't it. Now, in the interest of saving time, I think the witness can tell the basis of it.

BY MR. ISRAEL: Q. Give this Senate a supposititious rate—any old rate—I don't care what rate you make, and make the division in your own mind now.

A. Well, the rate registered up in the first place when we first organized was at ten per cent., with a millage for two years at ten per cent., and we insured the horse at about two-thirds its value. We could not exceed that. On a first-class horse we put \$1,000.00 for two years at that amount. Each officer would get a mill and a half out of that write-up.

BY THE PRESIDING OFFICER: Q. On the thousand or the hundred?

A. On the hundred.

BY MR. MANAGER EDGE: Q. A mill and a half on the liability, not on the premium?

A. Yes.

BY MR. ISRAEL: Q. Then each one took a dollar and a half out of that hundred?

A. Yes.

Q. Or seven dollars out of a hundred; how much did the agent get?

A. The agent in the first place got—I don't just remember what the agents did get. They got five and six; well, we raised it as we went along. We started out I think on five mills and of course we had to go out and take these agents into the field and teach them to get the business.

Q. I don't care anything about that. They took five mills, then on the thousand?

A. Yes, five mills on the liability.

Q. That would be five dollars—

Q. Well, let me see now; I am kind of bothered up in this; I may be mistaken on what the agents got on the start.

BY MR. MANAGER EDGE: I don't think it is material as to what the agents got.

BY THE PRESIDING OFFICER: I am of that opinion.

BY MR. ISRAEL: I will withdraw it.

Q. When Mr. Schively came in, you say everybody was on this millage basis?

A. Yes.

Q. And you were getting \$600 a month; then the company must have been at that time writing \$200,000 worth of insurance a month?

A. From three to four hundred thousand.

Q. And you were taking out the full three per cent. millage?

A. Up to two hundred dollars; it couldn't go over two hundred dollars.

Q. Two hundred thousand?

A. Two hundred thousand.

Q. Now, do you know of your own knowledge that when Schively took his position that he was not put on by your other directors at a flat salary of \$400 a month?

A. I know he was not.

Q. How do you know it?

A. I was at the meeting when the conversation was held. If anything was done such as that, it was done after I resigned. There was no talk that night about any flat salary.

Q. I don't care anything about that night. Schrock was commissioned to sign checks that night. Schively wasn't qualified for president until afterwards, was he?

A. Well, I don't know what they did after I resigned.

Q. Whether he went on a four-hundred-dollar-a-month basis after you resigned, you don't know?

A. Well, I know this, that the night I was there—

Q. You answer my question.

A. I don't know what was done afterwards. I wasn't back in the office.

Q. Now, do you want to be understood as telling this Senate that all of your officers were getting an equal millage at the time Schively came in?

A. All but Mr. Copeland; I think he was getting two mills.

Q. Why wasn't he getting as much millage as the others?

BY MR. MANAGER EDGE: I think all of this is immaterial.

BY THE PRESIDING OFFICER: Unless counsel can state his reasons why this can go in, I think it is immaterial.

BY MR. ISRAEL: I do not want to question your honor's ruling, but I am attempting to show why this is material; it will simply apprise this witness as to exactly what I am trying to get at and put him on his guard.

BY THE PRESIDING OFFICER: I think we will admit the evidence.

BY MR. ISRAEL: You may answer the question.

A. When he first came in he did not understand the business. He was a farmer, and didn't understand going out and getting business; he was willing and suggested to come in for less millage.

Q. Wasn't that Schively's condition so far as getting commissions was concerned?

A. No, sir; it was not.

Q. Did you know that Mr. Schively was an experienced solicitor?

A. I did not know that Mr. Schively— Well, Schively wasn't supposed, I don't think, to go into the field and get any business. He was supposed to do his work around the office.

Q. Why wasn't Copeland supposed to?

A. He didn't have the executive ability. He was supposed to look after the field work.

[Witness excused.]

BY MR. ISRAEL: I want this witness to remain.

Mrs. Maud G. Ward, being a witness called on behalf of the complainants, after having first been duly sworn, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. Please state your name.

A. Maud G. Ward.

Q. Are you the wife of Mr. Ward, who just left the stand?

A. I am.

Q. I will ask you, do you recall the time that Mr. Ward resigned as president of the Pacific Live Stock Association?

A. Yes.

Q. I will ask you whether or not, about that time, you saw in his possession three promissory notes?

A. I did.

Q. Just describe, as near as you can, those notes.

A. Well, there were three different notes, each for \$400. The first one—they were all dated July 10th—the first was to be paid in 30 days, the second in 60 days, and the third in 90 days.

Q. Where did you see those notes?

A. Mr. Ward handed them to me and I looked them over.

Q. Where did he bring them from, if you know?

A. From the Pacific Live Stock Company to our home.

Q. Do you know whether or not they had a meeting of the board about that time?

A. I know they did have a board meeting that evening.

Q. He came home after the meeting?

A. Yes.

Q. You saw the notes?

A. Yes, sir.

Q. In whose favor were the notes drawn?

A. They were drawn in favor of E. R. Ward.

Q. By whom were they signed?

A. J. H. Schively.

Q. Do you know what became of them?

A. We had them in our possession three or four days, and later on they were put up at the Fidelity National Bank as collateral for some money that Mr. Ward borrowed.

*Cross-Examination—*

BY MR. ISRAEL: Q. You weren't present when they were put up as collateral, Mrs. Ward? Mr. Ward took them to the house?

A. I know they were put up, because Mr. Lindsley told me they were.

Q. Mr. Lindsley told you they were?

A. Yes, sir.

Q. You have talked this matter over with Mr. Ward?

A. I have, you say?

Q. Yes.

A. Why, I had, yes, before that and after.

Q. I understand that you are Mr. Ward's wife?

A. Yes, sir.

Q. You know that at the time and out of which this charge of

perjury grew, that the Live Stock Company, of which your husband had been president, was under investigation by the grand jury? You know that?

A. Yes, sir.

Q. And you know the grand jury was attempting to find out whether the officers of the company had embezzled any of the funds, don't you?

A. Yes, sir.

[*Witness excused.*]

J. B. Schrock was called as a witness on behalf of the state.

*Direct Examination—*

By MR. MANAGER EDGE: It will probably take twenty-five, thirty or forty minutes to put the testimony of this witness on, and if the Senate desires we can adjourn.

By THE PRESIDING OFFICER: Is there any objection?

At 4:45 p. m. the Senate, sitting as a court of impeachment, adjourned until Wednesday morning at 9:30 a. m.

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SENATE CHAMBER,  
OLYMPIA, WASH., Aug. 18, 1909.

The Senate, sitting as a court of impeachment, convened at 9:30 a. m.

By THE PRESIDENT: I will call the senator from Spokane, Senator Rosenhaupt, to the chair.

By SENATOR STEVENSON: I desire now to make the motion I made out of order when the Senate was in session, that the minimum fine imposed by resolution passed the other day run at this time against all absent members who are so absent without leave of the Senate.

By SENATOR POTTS: I do not believe we should act hastily in this matter. I believe we should wait until we find out the cause of the delay.

By SENATOR FALCONER: I understand we have a standing rule that the secretary is ordered to charge up the fine against the gentleman from Spokane, without any motion. If this body sees fit to remit this fine, it may do it. It seems to me that is the way it stands.

By THE PRESIDING OFFICER: Is there a second to the motion of the senator from Astoria?

By SENATOR WILLIAMS: I second the motion.

By THE PRESIDING OFFICER: It is moved and seconded that the minimum fine be imposed upon any member absent at this time without an excuse.

[*The motion was put by the chair calling for a yea and nay vote.*]

By THE PRESIDING OFFICER: The motion prevails. The secretary will inform himself as to who are the absent members without excuse, and assess the fine accordingly.

*Direct Examination—*

BY SENATOR MINKLER: Mr. President, I would like to inquire of the maker of this motion what is to become of this money? What is to be done with this \$5.00 to be fined?

BY THE PRESIDING OFFICER: The chair would not like to rule upon that. Senator Piper is the author of the resolution.

BY SENATOR PIPER: I believe we ought to get the money before we figure on doing anything with it.

BY THE PRESIDING OFFICER: If there be no objection, Senator Piper and Senator Minkler will be appointed a committee to disburse the money.

SENATOR COTTERILL: I object.

BY THE PRESIDING OFFICER: I will ask Senator Cotterill to join the committee to avoid objection. We will now proceed to the trial of this cause.

J. B. Schrock, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

BY MR. MANAGER EDGE: Q. State your full name, please.

A. J. B. Schrock.

Q. Where do you live, Mr. Schrock?

A. I live at Spokane.

Q. How long have you lived there?

A. About five years.

Q. Do you know the association known as the Pacific Live Stock Association?

A. I do.

Q. What has been your connection with that company?

A. Well, I have been president.

Q. What other office have you held, if any?

A. Secretary and general manager.

Q. What office were you holding in that company during the spring and summer of 1906?

A. I was general manager.

Q. Do you know J. H. Schively?

A. I do.

Q. When did he become connected with the Pacific Live Stock Association?

A. Some time during the month of July, 1906.

Q. Were you present at a meeting of the trustees of that company held in the rooms of the Pacific Live Stock Insurance company on the evening of July 10, 1906?

A. I was.

Q. State who was present?

A. As I remember it, E. R. Ward, S. G. Copeland, William Hunter, and myself.

Q. Was Mr. Schively there?

A. He was there part of the evening.

Q. I will ask you whether or not during the time Mr. Schively was there was the matter of his becoming a member of the board of trustees discussed?

A. It was.



Q. From the discussion that was had there, what did you learn was the basis or the nature of the transaction by which Mr. Schively was to come into the company? How did Mr. Schively get into the company, if that will make it plainer?

A. Well, it was by an agreement between Mr. Schively and Mr. Ward.

Q. What were the terms of that agreement, so far as you know?

A. Well, by the terms of that agreement he was to pay \$1,200.00.

Q. Who was?

A. Mr. Schively.

Q. And how was that to be paid?

A. In three notes.

Q. How much each?

A. \$400 each.

Q. Were there any notes before you gentlemen during that evening?

A. There were.

Q. How much were they for?

A. For \$1,200.00.

Q. And how much each?

A. \$400 each.

Q. Who took those notes away from the meeting finally when you got through with them?

A. Mr. Ward.

Q. Who?

A. Mr. Ward.

Q. Do you know whether the notes were in favor of Mr. Ward?

A. They were.

By MR. ISRAEL: That is very leading.

Q. State whether or not they were signed by Mr. Schively?

A. They were signed by Mr. Schively.

Q. Was any resignation of Mr. Ward's acted upon at that time?

A. There was.

Q. You perhaps heard read yesterday the minutes of that meeting as they were introduced in evidence from the minute book, did you?

A. Yes, sir.

Q. Is that substantially what occurred at that meeting?

A. That was substantially what occurred at that meeting.

Q. When did you first learn of the deal between Schively and Ward? When was it first brought to your attention? I will just add on there, did you hear of it before you had the meeting that night?

A. Yes, sir; I did.

Q. In what way was it called to your notice?

A. Well, Mr. Schively spoke to me about it, and also Mr. Ward, but I could not give the exact dates or times.

Q. About how long was it before the meeting that night—about how long? You needn't state exactly if you don't know.

A. In the fore part of the day, in the forenoon, we had talked the matter over.

Q. Was there anything said during that conversation in reference to whether or not this deal would be satisfactory to the other trustees?

A. There was.

Q. So that Mr. Schively knew, then, even before the meeting, about

this transaction between himself and Mr. Ward? You say he told you about it?

BY MR. ISRAEL: Well, now, counsel, I don't want to make any formal objections, but as an attorney you know you are leading this witness.

BY MR. MANAGER EDGE: Well, I am simply endeavoring to get the facts as quickly as possible.

BY MR. ISRAEL: Please don't lead the witness. I don't want to object. He is intelligent. I ask that counsel desist from leading questions.

BY MR. MANAGER EDGE: Read the question. [*Question read.*]

Q. Is that correct?

A. That is correct.

Q. At the time Mr. Ward sold out to Mr. Schively, how was Ward being paid, as to being on a flat salary or on a commission basis?

A. He was on a commission basis.

Q. Was anything said during that meeting in reference to what Schively should get when he became a member of the company?

A. He should receive the same commissions as Mr. Ward.

Q. To take Ward's place?

A. Yes, sir.

Q. Do you know how these three notes Schively gave Ward were paid?

A. How they were paid?

Q. Yes.

A. They were paid by the Pacific Live Stock Association and charged to Mr. Schively's account.

Q. Was the company in any way responsible for the payment of these notes, or was it a transaction between Schively and Ward?

A. It was a transaction between Schively and Ward.

Q. Do you know where those notes were put after Mr. Ward took them?

A. Mr. Ward told me he put them in the—

BY MR. ISRAEL: One moment, if the court please: I think that is going clear beyond the pale of evidence. I shall have to insist on the objection. It is hearsay. Mr. Ward told him.

BY MR. MANAGER EDGE: I asked him the fact, if he knows whether there was such a transaction.

BY THE PRESIDING OFFICER: If you know, Mr. Witness, where the notes were taken, you will just so state.

Q. Proceed to do that.

BY MR. ISRAEL: Of your own knowledge.

A. At what time?

Q. Well, state within the next few days after Mr. Ward got them what became of them; do you know?

BY MR. ISRAEL: Of your own knowledge?

BY MR. MANAGER EDGE: Well, just a moment.

BY MR. ISRAEL: Well, then, if the court please, I object to any hearsay testimony.

BY MR. MANAGER EDGE: Well, he can testify what the facts are.

BY MR. ISRAEL: He started to testify what Mr. Ward told him and

counsel now insists in having him state what Mr. Ward told him. Now, that is hearsay. There is a limit to all of these matters.

BY THE PRESIDING OFFICER: I don't see, Mr. Edge, that—

BY MR. MANAGER EDGE: Very well; I will strike that.

BY THE PRESIDING OFFICER: A statement made by some other person to this witness would be good evidence.

BY MR. MANAGER EDGE: I was simply asking for the facts—what he knew.

BY THE PRESIDING OFFICER: That would be competent.

Q. Well, I will get at it another way. How were the notes paid, Mr. Schrock—in what manner?

A. The notes were paid by issuing a check by the Pacific Live Stock Association to the Fidelity National Bank.

Q. I hand you here a check [*Hands to witness.*] Do you recognize that check?

A. I do.

Q. What was that check issued for?

A. The first note that was given to Mr. Ward.

Q. Whose signature is that upon that check?

A. That is my own signature.

BY MR. MANAGER EDGE: [*Handing check to opposing counsel.*] Any objection?

BY MR. ISRAEL: No objection.

BY MR. MANAGER EDGE: We offer in evidence the check.

BY MR. ISRAEL: Let the secretary read it.

BY THE PRESIDING OFFICER: The secretary will read the check and it will be received in evidence.

BY THE SECRETARY: "Pacific Live Stock Association. No. 4520. Spokane, Washington, August 2, 1906. Pay to the order of Fidelity National Bank, \$400, four hundred dollars. Signed, Pacific Live Stock Association. J. B. Schrock, general manager."

Endorsements: "To the Old National Bank, Spokane, Washington. Pay through the clearing, August 3, 1906. Fidelity National Bank."

[*Check marked "Article 25, Complainants' Exhibit No. 2."*]

Q. Do you recognize that paper? [*Handing witness another paper.*]

A. I do.

Q. What is that?

A. That was given for the second note of \$400 to Fidelity National Bank.

Q. Whose signature is that?

A. That is my signature.

Q. What was that given for?

A. That was given for one of the Schively-Ward notes.

BY MR. MANAGER EDGE [*After submitting paper to opposing counsel*]: No objection.

BY THE PRESIDING OFFICER: It will be received in evidence and read by the secretary and marked as an exhibit under the particular article.

BY THE SECRETARY: "Pacific Live Stock Ins. Association. Spokane, Washington. September 5, 1906. No. 4020. Pay to the order of the Fidelity National Bank, \$400 (four hundred dollars). Pacific Live Stock Insurance Association. J. B. Schrock, general manager."

Endorsements: "To the Old National Bank, Spokane, Wash. Paid through clearing, September 6, 1906. Fidelity National Bank."

[Check marked "Article 25, Complainants' Exhibit No. 3."]

Q. What is that, Mr. Schrock? [*Handing witness another paper.*]

A. This is a check given in payment of the third note for \$400.

Q. Whose signatures are to that check?

A. My own as well as J. H. Schively.

[*Manager Edge submits check to opposing counsel.*]

BY MR. MANAGER EDGE: I offer this in evidence.

BY MR. ISRAEL: No objection.

BY THE PRESIDING OFFICER: There being no objection, this check will be received and read and marked an exhibit under the proper article.

[Check marked "Article 25, Complainants' Exhibit No. 4."]

BY THE SECRETARY: "Pacific Live Stock Insurance Association. No. 5134. Spokane, Washington, 10-3-06. Pay to the Fidelity National Bank, \$400 (four hundred dollars). Pacific Live Stock Insurance Association. J. H. Schively, president. J. B. Schrock, general manager."

Endorsement: "To the Old National Bank, Spokane, Washington. Paid through the clearing, October 4, 1906. Fidelity National Bank."

Q. During the time Mr. Schively was connected with the association did he receive a flat salary or was he paid upon a commission basis?

A. He was paid upon a commission basis.

*Cross-Examination—*

BY MR. ISRAEL: Q. Mr. Schrock, you occupied at various times during your connection with this company the office of president, secretary, and general manager?

A. Yes, sir.

Q. When were you president?

A. I was elected president after Schively's resignation.

Q. When were you secretary?

A. I was secretary during—

Q. Speak to the senators, please, and speak loud, so they can hear you.

A. I was secretary, if I remember right, all through 1906.

Q. Secretary during all of 1896.

A. 1906.

Q. 1906. When were you general manager?

A. I don't remember the exact date, but some time during the fall of 1905 I was elected general manager.

Q. How long did you remain general manager?

A. I remained general manager until the spring of 1907.

Q. You were general manager, then, during the entire time that Schively was connected with the company?

A. I think I was.

Q. Well, you know you were if you were elected general manager in 1905 and held the position until the spring of 1907, don't you?

A. Yes, sir.

Q. How long were you the financial agent of the company?

A. In fact, during all of that time.

Q. During all of that time your check, without the countersigning of any one else, would draw the company's money out of the bank?

A. Not all the time.

Q. It would in July?

A. It would; yes, sir.

Q. It would, in August?

A. Yes, sir.

Q. It would in September?

A. I think so.

Q. It would not in October?

A. There were checks made at different times.

Q. But in July, August and September your signature to a check would draw the money of the company at the bank without any counter signature?

A. It would.

Q. And that was the same condition in October and November—in fact, all of the year 1906, was it not?

A. No, sir.

Q. When did it change?

A. It was necessary for the president and general manager's names to be signed to the check up to the time that Mr. Schively took Mr. Ward's place.

Q. Yes; and up to that time, then, to get any money out of the bank that was deposited there in the name of the association, it required the signature of both Ward and yourself?

A. Yes, sir.

Q. When Schively came the situation was changed and your check alone then would get the money out of the bank?

A. Yes, sir.

Q. And that continued up until January, 1907, or up to the time that Schively went out of office, didn't it? That rule didn't change until Schively went out of office and you were elected president?

A. I don't think it was, sir.

Q. You don't think—

A. I don't think it was changed.

Q. Don't think it was changed?

A. No.

Q. When did you first learn, Mr. Schrock, that Mr. Schively was to make any connection, or to be connected with, this association in any way?

A. Well, I had a talk with Mr. Ward, as well as Mr. Schively, and which one first I don't remember.

Q. Had you ever talked with Mr. Schively prior to July about his coming into your company?

A. I think I had.

Q. Had you had any correspondence with him about coming into the company before July?

A. I don't remember that he had any correspondence in regard to that.

Q. You would not say that you did not?

A. No, sir; I would not say that I did not.

Q. When do you fix as the first time that anything was said or written between yourself and any one else, of your knowledge, as to Schively—about his coming into the company?

A. I don't know as I can state any exact time.

Q. Approximate it for me in months or weeks.

A. Oh, possibly two months before.

Q. Two months before; that was the original proposition of Schively coming into the company, the tentative proposition? How was he to come in, for what purpose, to do what; what office was he to take, and what were the first things he did?

BY MR. MANAGER EDGE: Now, if the court please, this is going back to something that happened several months before; if it is a defense, they should prove it in the defense. It is not proper cross-examination.

BY THE PRESIDING OFFICER: The witness testified that the first time that Schively had been there was on the evening of July 10th. I think that it is proper for the witness to testify to any matter that would tend to prove or disprove this matter. I think it is proper cross-examination.

*[Question repeated by the stenographer.]*

A. I don't know that there was any special office talked about at that time.

Q. Did you desire at that time, Mr. Schrock, to get rid of Mr. Ward as president of the company?

A. Not that I know of.

Q. Wasn't there a friction between the other members of the company and Ward?

A. There was some friction, yes.

Q. Some dissatisfaction?

A. Yes.

Q. Wasn't there some desire to get rid of him?

A. Not on my part.

Q. Was there some desire on the part of the other members to get rid of him?

A. Well now, I couldn't say as to that.

Q. Mr. Schively was over to Spokane in regard to the affairs of the company, not as an insurance commissioner, but in connection with its private affairs, before July, 1908, if you remember—1906?

A. Well, I think he was.

Q. What was he considering over there in connection with the affairs of the company?

A. I don't know that I could hardly explain as to that. It has been a long time since then.

Q. And at that time he was to come into the company and assume some of its offices, wasn't he?

A. Yes, sir.

Q. And the general desire, outside of Ward, of yourself and associates, to get Schively in there for the purpose, if possible, of subserving the interests of the company and changing its methods and getting it on a stable business basis?

A. Yes, sir.

Q. That was the purpose of getting John Schively over there?

A. That was the purpose.

Q. And Ward was off in Arizona?

A. Yes.

Q. He wasn't attending to the affairs at all; he couldn't under the conditions?

A. That is the idea exactly.

Q. And it was freely discussed between yourself and members of the company that it would be a good thing if Ward was out and Schively was in as president?

A. Yes, sir.

Q. And all of those things occurred before the 10th of July, 1906, did they not?

A. They did.

Q. And that was the condition when John Schively came over there in 1906?

A. Yes, sir.

BY MR. ISRAEL: If the chair please, I would like to have a recess at this time for about five minutes.

BY THE PRESIDING OFFICER: At the request of counsel for respondent, there will be a recess declared for five minutes.

BY MR. ISRAEL: Q. Then, Mr. Schrock, if there had been any deal between Ward and Schively, whereby Ward agreed to resign so that Schively could be elected president, Schively would have come into the company, any way, under the arrangements that were made, wouldn't he, when he came over there in July, 1906?

A. He probably would.

Q. Now do you recall Schively coming to you that day or the day before the meeting of the board of directors and saying to you that Ward was willing to retire and get out as president and he would pay \$1,200.

A. I do.

Q. Do you remember saying that day that that would be just the proposition to carry out, as in that way you could make Schively the president and trustee both?

A. Yes.

Q. And then afterwards the meeting was held at which these notes were drawn up, the evening of the 10th of July?

A. I think that was the date, yes.

Q. And at that meeting was gathered yourself, Mr. Hunter, Mr. Ward, and Mr. Copeland; you were all there at the meeting?

A. Yes, sir.

Q. You were trustees of the company?

A. Yes, sir; we were.

Q. Mr. Ward was the president, you were the secretary and general manager?

A. Yes, sir.

Q. Mr. Schively, when you came to open the meeting that night, was not present, was he?

A. He was not.

Q. He was not; there was another gentleman present there, a Mr. Shellenburger, the bookkeeper?

A. I don't remember whether he was in the meeting or not.

Q. Don't you remember that he prepared the notes.

A. He prepared the notes.

Q. What is your recollection whether he prepared them there at the meeting or before the meeting opened?

A. My recollection is that he was in the office, in the large room, and we had a special room for our meetings; and he was in the office working and we called on him to prepare the notes.

Q. You don't know whether he prepared them there in the little office or whether he brought them in to the board meeting?

A. I don't remember as to that.

Q. But you do remember that the notes had been prepared when some one was sent out to bring Schively in?

A. Yes.

Q. Who was sent out to bring Schively in?

A. As I remember, it was Mr. Paul Shallenberger and S. G. Cope-land.

Q. That was the bookkeeper?

A. Yes, sir.

Q. Then he must have been there at the meeting?

A. He was there at the latter part of the meeting.

Q. And at this latter part of the meeting, they went out and brought Schively in?

A. Yes, sir.

Q. Schively signed the notes and they were turned over to Mr. Ward?

A. Yes, sir.

Q. You next knew of the notes in the possession of the bank?

A. Yes, sir.

Q. What were the dates of the notes?

A. I don't remember the dates, but they were 30, 60 and 90-day notes.

Q. Thirty, 60 and 90-day notes. I call your attention to exhibit No. 3 of article 25, under the proof of article 25 that you have had before you, and ask you if this is not the check that you gave to take up the first note, the 30-day note?

A. No, it is this one. [*Witness refers to another check.*]

Q. Yes, that is my mistake; it is exhibit 2 instead of 3, that is the check.

A. Yes, sir.

Q. Did those notes bear any interest?

A. I don't think they did; to my recollection, they did not.

Q. If the note was issued under date of July 10th, 1906, and had thirty days to run, why was it paid off on August 2nd, instead of August 10th, before it was due eight days?

A. Well, I don't know that I could explain that.

Q. Do you remember of the messenger from the bank coming down with this note to the Live Stock office the day you paid it?

A. Yes, he always brought the notes.

Q. Do you remember stating at that time, and being a little angry at that time, that Ward had agreed that he would not press these notes; do you remember making that statement at the time when he came in there ahead of time with the note?

A. It seems to me there was some conversation of that kind.

Q. You were a little angry over the fact that Ward was not keeping his agreement that he had made about these notes—that he wouldn't press them—weren't you?

A. I was.

Q. What did you do with this note that you took up that day?

A. It was pasted in our receipt book that we kept for that purpose; we kept a book for that purpose; we kept all other notes and receipts in a special book for that purpose.

Q. You kept a special book, as I understand it; you kept a special



book in which was filed away all notes and receipts and vouchers of various payments that were made by the company?

A. Yes.

Q. This note was put in these files?

A. It was.

Q. On September 5th, or three days before the 60-day note would come due, you gave the check marked originally 2526 in payment for that note?

A. Yes, sir.

Q. And that note you also pasted in the note and receipt book?

A. Yes, sir.

Q. And on the 3rd day of October, you signed the check that paid the 3rd note?

A. Yes, sir.

Q. And that note you placed on file in the same book that you used for vouchers and receipts and canceled notes of the company?

A. Yes, sir; we did.

Q. Where are those notes, Mr. Schrock?

A. Those notes were turned over to the receiver with the books.

Q. What receiver?

A. In the first place they were turned over to Charles Murray.

Q. He was the first receiver?

A. Yes.

Q. Charles Murray, then, at one time had these notes in his possession?

A. He did.

Q. Who was the second receiver?

A. Lloyd Ganby.

Q. Was there any time between the first receivership and the second receivership that the notes and canceled vouchers were turned back into your possession?

A. There was.

Q. Did Murray turn back into your possession these notes?

A. He did.

Q. As part of the files of the company?

A. Yes.

Q. Where did you keep them when Murray turned them back to you?

A. Why, we kept them with the rest of our books, in the safe.

Q. How long were you in possession of your books and canceled notes and accounts before the second receiver took charge?

A. Somewhere between sixty and ninety days, as I remember it.

Q. When you turned over to the second receiver, did you turn over the notes?

A. Yes.

Q. Have you ever stated that before now to any one else?

A. That I turned over all the books?

Q. Has any one else asked you before now if you turned over the books to the second receiver?

By MR. MANAGER EDGE: I object to that—

By MR. ISRAEL: I will withdraw that question and make it more specific. Has any member of this board of managers or any of the attorneys asked you what became of those notes?

A. There was something said in regard to the notes. I did not testify—

Q. What did you testify?

A. That they were turned over to the receiver, and that I knew right where I could find them if I had access to the books.

BY MR. ISRAEL: I merely want to apologize for asking this line of questions, but the gentleman on the other side tells me yesterday that Mr. Schively had the notes.

BY MR. MANAGER EDGE: I will state for the senators and for the counsel that we are just as anxious to find those notes as any one else. At the time the grand jury was in session, and since, a thorough search was made for them in the effects of the receiver, or to find whether they were in the possession of any one else, and have been unable to locate them. If we could find them, we would be only too glad to put them in evidence here. We are just as anxious to find them now as we were all the time. Not being able to find them, we wanted to prove what they contained, as far as we could.

BY MR. ISRAEL: What the gentleman says I concede, but what I was getting at was this: That I find I have gone through all of this testimony almost to an idle purpose, because when I called for these notes yesterday some one at the table—either the honorable gentleman or the assistant attorney general—flung back at me the remark, "You ought to know where they are. Your client got them," and I suppose that this gentleman here is honest in his statement that—

BY MR. LEE: I object to this quibble at this time. Counsel is good enough a lawyer to know that it is objectionable. This is for the purpose of clouding the cross-examination of this witness, and he has no right to enter into this quibble with the attorneys on this side.

BY THE PRESIDING OFFICER: I think the statement of respondent's counsel questioning the methods of counsel for the board of managers is uncalled for at this time.

BY MR. LEE: I want the chair to instruct counsel to proceed with the cross-examination in the proper way.

BY THE PRESIDING OFFICER: I believe the counsel will.

Q. Then these notes were not turned over to John Schively.

A. No, sir.

Q. And you think you could find them if you had access to the proper books?

A. If they have not been taken out, I certainly could.

Q. Have you stated that fact to the prosecuting attorney of Spokane, or any members of this honorable board of prosecutors, if you could get access to the proper files you thought you could find them?

A. I have.

Q. Have they given you any chance to have access to the files?

A. No, sir.

Q. Do you remember in March, 1907, Mr. Schrock, of Mr. Schively coming to you and requesting you to exhibit these notes to Mr. McDonald, ex-assistant attorney general at that time, at Spokane.

BY MR. MANAGER EDGE: If the court please, I will have to object to this. If they endeavor to prove anything of that kind, they should prove it when they get to their part of the case. This witness has testified here as to certain notes. We are willing that they thresh all

around that anywhere within reason, but as to these other things, that is competent for the respondent, if he can, to prove it himself. It does not make any difference whether McDonald talked to Schrock six or eight months after this time.

BY MR. ISRAEL: The witness has testified that John Schively signed these notes. The charge of perjury that this honorable Senate is trying is the truth regarding these notes and as to what they were and what he signed and what he did not sign. This question is going doubly to the purpose of impeachment, as it is admitted this is a lost instrument. They have proven the contents of this instrument on the theory that it was lost. I have a right to show on this cross-examination both the fact that it is not lost and what its true contents were. It is strictly within the limits of cross-examination.

BY THE PRESIDING OFFICER: I am inclined to think it would be a self-serving declaration, under the statement made by Mr. Schively to this witness in 1907; but under the wide latitude allowed in the cross-examination of this witness, the chair is inclined to permit that testimony to go in.

BY MR. ISRAEL: Q. I do not want to call it a declaration of Mr. Schively, but you will remember the circumstance of Mr. Schively coming to you and asking you to get the notes and show them to Mr. McDonald in the Fernwell building in the fall of 1907.

BY THE PRESIDING OFFICER: Did I understand counsel to say in the fall, or was the question with reference to March?

BY MR. ISRAEL: In March, in the spring of 1907.

A. I do not think we had access to the books at that time.

Q. Shortly after you got the books back from Mr. Murray, didn't Mr. Schively come to you and ask you to take the notes and bring them up to Mr. McDonald and let McDonald see them; and don't you remember you took the notes and you and Schively went up to McDonald's office, and McDonald looked at the notes and handed them back to you, and you took them back to the office?

A. No, I do not remember that.

Q. No, I am mistaken in my statement to you. Don't you remember that Mr. Schively came to you at the office with Mr. McDonald and you handled the notes up there, and showed them to McDonald and then put them away?

A. I think it's a fact.

Q. Yes; now, do you recall in May or June of this year of meeting Schively on the sidewalk at the door of the Rookery in Spokane? After he had been indicted for perjury?

A. I do.

Q. Do you remember saying to him at that time, "Why did you testify you did not sign those notes?" Do you remember saying that to him?

A. I do, yes.

Q. Do you remember the reply, "Because I did not sign them," and you said, "Yes, you did. You signed them in my presence"?

A. I remember.

Q. Do you remember his saying, "I don't remember that I did, so let us go upstairs and talk with my attorney"?

A. Yes.

Q. Do you remember going upstairs into Mr. McDonald's room in the Rookery?

A. I do.

Q. Do you remember at that time Mr. Schively said to McDonald, "Mr. Schrock says that I signed those notes, and I do not remember having signed them"; do you remember his making that statement to McDonald in your presence?

A. Yes, I do.

Q. Do you remember Mr. Schively turned to you and said, "Now, John, tell me any other circumstance, so that I may be able to recall it"—

BY MR. MANAGER EDGE: I object to that. This colloquy taking place at this time as to what Mr. Schively said to the witness in excuse or palliation for his offense, is not evidence and the excuses he made to Mr. Schrock on that occasion are not proof—is not proper cross-examination of this witness. This witness is not brought in here for the purpose of glossing the matter over, and sifting it over in that way. It is not proper cross-examination.

BY MR. ISRAEL: It is not for that purpose. This is all preliminary to the very next question I am going to ask.

BY THE PRESIDING OFFICER: If it is preliminary, then I will permit it; otherwise the objection will be sustained.

Q. Do you remember of his saying that?

A. I do.

Q. When he said that to you, do you recall that you said to him in answer to his query, "Ward wanted you to sign these notes also, in order to add strength to them, and we sent out for you and you came into the room, and signed them"; do you remember saying that?

A. No, I don't.

Q. You would not say you did not say it, Mr. Schrock?

A. No, sir; I would not.

BY THE PRESIDING OFFICER: Did you say you did not or you would not?

A. I do not say I would or I would not, because I don't remember as to that.

Q. Do you remember Mr. Schively replying, "Well, that is all a blank to my mind"; do you remember that answer?

A. Yes, I remember that.

Q. Where is this bookkeeper, Mr. Schrock?

A. Mr. Shallenberger?

Q. Yes.

A. He is in Montana.

Q. He is not here?

A. No, sir; he is not here.

Q. I ask you for information simply, Mr. Schrock, not as a matter of cross-examination, are all of your books here?

A. I do not know. I see there is some of them there. [*Indicating books on table.*]

BY MR. MANAGER EDGE: Most of them are here, I think.

BY MR. ISRAEL: Q. Mr. Schrock, you testified that after the coming of Mr. Schively into the presidency of the company that he was paid on a millage basis, and not on a flat salary?

A. Yes.

Q. What was the basis or division to Schively on this millage basis. What proportion did he get of the millage?

A. He got three mills on all the business that was written, the same as the rest of—most of the rest of us, any way.

Q. Mr. Schrock, have you preserved, or have you in your possession, or can you put your hand on, any of the letters that you received from Mr. Schively?

A. No, sir.

BY SENATOR PRESBY: What was the question?

BY MR. ISRAEL: Whether the witness has in his possession, senator, any letters that were written to him by Mr. Schively in connection with this matter.

A. No, sir.

Q. I show you a letter dated October 12th, 1906, and will ask you to look at it and simply state whether you remember ever having received such a letter from Mr. Schively. Just glance through it, and I challenge your recollection as to whether you ever received any such letter. [*Handing witness letter.*]

A. [*Witness reads letter.*] Yes.

BY MR. ISRAEL: Mr. Clerk, will you kindly mark this "Article 25, Defendant's Identification C."

[*Secretary marks letter Article 25, Defendant's Identification C.*]

Q. Here is yet another letter, under date of September 6. Do you remember of having received the original letter about that time in the ordinary course of mail? [*Handing witness letter.*]

A. [*Witness reads letter.*] Yes, I think I received letters of that kind.

Q. You think you received the original of this letter?

A. Yes.

BY MR. ISRAEL: I will ask to have this marked "Article 25, Defendant's Identification D."

[*Secretary marks letter "Article 25, Defendant's Identification D."*]

BY MR. MANAGER EDGE: Have you any objection to counsel examining that before you use it?

BY MR. ISRAEL: Certainly, you may look at it; but it is not proper. It is merely offered for identification. You should know as a lawyer that an article must not necessarily be submitted to counsel on the opposing side, for examination before it is put in evidence.

BY MR. MANAGER EDGE: I know, but simply as a matter—

BY MR. ISRAEL: Well, look at it—

BY THE PRESIDING OFFICER: Counsel will proceed with the examination. There is no occasion for this controversy at this time.

BY MR. ISRAEL: I am branding it now, so that we will know it when it goes into the evidence.

BY MR. MANAGER EDGE: The incident is closed.

BY MR. ISRAEL: I do not care to cross-examine this witness at this time further, but I want the witness held in attendance, subject to recall to the stand, in case it becomes necessary.

BY THE PRESIDING OFFICER: The witness will not be excused from

attendance at this time. Mr. Edge, do you wish to proceed further on redirect examination?

BY MR. MANAGER EDGE: Yes, I have a few questions on redirect examination.

*Redirect Examination—*

BY MR. MANAGER EDGE: Q. Mr. Schrock, did you mean to be understood on cross-examination that there was an arrangement by which Mr. Schively was to come as general manager of this company, no matter whether he came as trustee or president? Did you mean to be understood as stating that?

A. No, sir; not in that way.

Q. Was there any arrangement by which Schively could come in as manager, whether he came in as trustee or president, or was there any arrangement by which he could come in in that way?

A. No, sir; there was not.

Q. Then, if Mr. Schively had not made this arrangement with Mr. Ward, would he have become a trustee or president of the company?

A. I think he would have.

Q. Even if he had not made this arrangement with Mr. Ward?

A. Yes, sir.

Q. In what way would he have become a trustee or president?

A. Well, there was another trustee that was willing to resign, or expressed his willingness to resign, and he would have taken his place, in all probability.

Q. But you would have had to have secured that other trustee's consent first?

A. Yes.

Q. But he would not have become a trustee or president unless some other president or some trustee was willing to step out and let him take his place?

A. That was the idea.

Q. And he would have to make arrangements with him before the trustee did step out?

A. Yes, sir.

Q. And that he simply made this arrangement with Mr. Ward and took his place?

A. Yes, sir.

Q. And if he had not made this arrangement with Mr. Ward, and agreed to have paid him this much money, you would not have thrown Mr. Ward out and put Mr. Schively in, in his place, would you?

A. No, sir.

Q. Now, during the time Mr. Schively was in there, was there any time that both of you were authorized to sign checks?

A. I think so.

Q. That accounts for some of these checks [*indicating*] having both signatures on?

A. Yes, he signed them as president and myself as general manager.

Q. Where were the notes, Mr. Schrock, the last time you saw them?

A. That was in our office.

Q. When was that?

A. That was during the time intervening between Charley Murray's turning the books back to us and Lloyd Gandy taking possession of them.

Q. Lloyd was the first receiver and he resigned, and Gandy took his place?

A. Yes.

Q. It was changed, any way?

A. Yes, sir.

Q. How did you happen to notice them on that occasion?

A. Well, from my own curiosity I was wondering whether the notes were bad, and I made a search for them and found them.

Q. You do not know now whether Mr. Gandy has them or what has become of them?

A. No, sir; I do not.

Q. You had a pouch you kept your canceled notes in?

A. No, sir; it was a blank receipt book we used for that purpose.

Q. Then, Mr. Schively coming into this company was, as I understand you, not by any arrangement between him and you and the other members, and the trustees, but it was by virtue of an arrangement between Mr. Schively and Mr. Ward, to which you consented. Is that a fact?

A. That is the fact—to which all of us consented.

Q. Yes, to which all of you consented.

*Cross-Examination—*

By MR. ISRAEL: Q. Now, Mr. Schrock, it was the intention to take John Schively into the Live Stock Company before ever he had any talk with Mr. Ward? You have so testified. Before he ever made any deal with Mr. Ward it was the intention to take him into the company?

A. Please state that again.

Q. Before ever there was any talk between Mr. Ward and Mr. Schively as to Mr. Ward resigning, it had been discussed and it was the intention to take Mr. Schively into the board of directors or trustees of your company?

By MR. MANAGER EDGE: I object to that. The witness cannot testify as to what the intentions of any one else were. He may testify as to what he knows, but not as to what there may have been running in the minds of any one else.

By MR. ISRAEL: The witness can testify as to any arrangement he or any other members of the board may have discussed.

By MR. MANAGER EDGE: That is a different question from what you asked.

Q. That had been discussed?

A. Yes, that had been discussed.

Q. Now, you had passed a rule and had a rule at that time whereby a trustee could be removed by a majority vote of the board, hadn't you?

A. By a three-fourths.

Q. By a three-fourths vote you could remove a trustee?

A. Yes, sir.

Q. And it had been discussed, before ever the Ward incident, that if necessary three-fourths of the board would remove this trustee and put Schively in his place; now, that had been discussed, hadn't it?

A. Not just in that way.

Q. Well, in some way, it had been talked about how he could be put on the board of directors, hadn't it?

A. It had been talked about; yes, sir.

Q. And it had been talked that it could be done with the use of this rule?

A. Yes, sir.

Q. There never was any time either before or after the Ward incident that the matter was ever discussed of Schively becoming general manager, was there? Counsel asked you the question, and you negatived the idea that that arrangement was ever made for Schively to come in as manager. Now, there never was any discussion of his being manager at any time?

BY MR. MANAGER EDGE: Well, if that is the question, let counsel submit it in the proper form. He reads language I have stated, what he stated and then throws that at the witness and asks him to answer it.

BY MR. ISRAEL: I will withdraw it.

Q. Do you recall this manager asking you by direct, leading question, this question: It was never agreed prior to the Ward incident that Schively should be manager?

BY MR. MANAGER EDGE: Now, I object to that, if the court please, unless he wants to explain to the witness what a direct and leading question is. I don't believe the witness understands.

Q. You remember the manager asked you that very question a while ago.

BY THE PRESIDING OFFICER: If the witness does not understand the question, please state so.

A. I don't understand what you are getting at.

Q. A leading question, Mr. Schrock, is one that suggests the answer, puts the answer in the witness' mouth; if you will watch the gentleman, he will give you many demonstrations of it.

BY MR. MANAGER EDGE: I object to that, if the court please. This is improper. Counsel knows that.

BY MR. ISRAEL: I have a right to cross-examine him. I have a right to ask leading questions, your honor, on cross-examination.

BY THE PRESIDING OFFICER: Yes, sir; but if counsel on the other side had asked any direct or leading questions, it was counsel's privilege to object to them at any time and not comment on them at this time.

BY MR. ISRAEL: All right, your honor; I withdraw the comment.

BY THE PRESIDING OFFICER: Yes, sir.

Q. He asked you almost immediately as soon as I had turned you over for redirect examination the direct question: It is a fact that it never was discussed or thought of—I am not getting his exact language—following Ward's deal with Schively, that Schively would be manager of the company?

BY MR. MANAGER EDGE: That was not the question I asked him. I asked him if any arrangement had been made whereby Schively was to come in as general manager—not whether it was discussed or talked about among the trustees.

BY MR. ISRAEL: Well, I will adopt his suggestion, your honor, so as to save time.

Q. Now, you have gotten the question that Mr. Edge says he asked



you and you understand what the question was, whether it was ever arranged; is that right? .

BY MR. MANAGER EDGE: Whether an arrangement had ever been made.

BY MR. ISRAEL: An arrangement had ever been made whereby Schively was to become manager, and you answered no. Do you remember that question and answer?

A. Whether Ward and Schively made this deal or not, that is the way I understood the question to be?

Q. That there never was any arrangement for him to be manager; you understood the question when he asked you?

A. Yes, sir.

Q. But you did not mean to say, did you, in making that answer that there were not arrangements being made before the Ward deal to take Schively in as a trustee; you did not mean to deny that, did you?

A. No, sir.

Q. Mr. Schrock, Mr. Schively as president was required to sign with yourself promissory notes and various documents of your company, wasn't he? You were manager and secretary and he as president signed all of those papers, didn't he?

A. No, sir.

Q. You signed them alone?

A. I signed them alone as secretary.

Q. Now, irrespective of whether the rule involved that particular time was that you should sign alone or some other officer should sign with you, there never was a time that the money could be gotten out of the bank under arrangements of the bank without your signature; that is true, isn't it?

A. That is true.

Q. Your signature had to be there, no matter whether anybody else's was?

A. That is true.

BY MR. MANAGER EDGE: I would like to have it understood now that these exhibits may be introduced here.

BY THE PRESIDING OFFICER: Just a moment, a senator has presented me with a written question, and I want to ask that it be passed upon.

BY MR. ISRAEL: The senator has a right to have his question asked if he desires.

BY THE PRESIDING OFFICER: Senator Cox asks the witness, Who paid these notes, the company or Mr. Schively?

BY SENATOR COTTERILL: Mr. President, these are important questions, and I trust the witness will answer loud enough that we may all hear. I suggest that he address himself to Judge Piper in the gallery.

BY THE PRESIDING OFFICER: If Mr. Schrock is acquainted with Judge Piper, he will please address himself to Judge Piper and speak loudly.

A. The company.

BY MR. MANAGER EDGE: Just a minute—

BY MR. ISRAEL: He has answered the question, "The company."

BY MR. MANAGER EDGE: I suggest that the witness answer fully, so the Senate will understand his answer.

BY MR. ISRAEL: Mr. Stenographer, read the question and read it loud, so that the senators may all hear. [*Question read.*]

A. The company paid these notes and the amount was charged to Schively's account.

BY SENATOR STEVENSON: Mr. Chairman, I would like to ask Mr. Schrock one question.

BY THE PRESIDING OFFICER: The question may be asked, if written out by the senator. I will hold the witness in the chair. The chair will state at this time that it is the privilege of any senator to ask any question that he may desire by sending it in writing to the chair, where it will be passed upon as to its propriety. At the request of Senator Stevenson, the question is, What did Mr. Schively's account consist of, a credit for millage account furnished? This is a question asked by Senator Stevenson. I assume that when the witness answered that this was charged to Mr. Schively's account in the company, the senator wants to know what that account consisted of, and what comprised the credit of that account. The witness will please answer.

BY MR. MANAGER EDGE: I will state that we intend to call the bookkeeper, probably the next witness, who had charge of these accounts, and entered the item and probably can tell. However, if the senators desire, Mr. Schrock can testify.

BY THE PRESIDING OFFICER: If you can answer, Mr. Witness, the question is, Of what did Mr. Schively's account consist of, a credit for millage premiums, or what? What was that account charged? You say these checks were paid \$400.00 each and charged to Mr. Schively's account; of what did that account consist of, if you know?

A. That account consisted of three mills on all the business that was written by the company up to \$200,000.00; or, in other words, any trustee could not receive over \$200.00 on a mill or \$600.00 for three mills, and that was credited to Schively's account.

BY SENATOR STEVENSON: That was credited to Mr. Schively's premium account, was it, millage premium account?

A. Yes, sir.

BY THE PRESIDING OFFICER: A question at the request of Senator Cameron: Mr. Witness, did you see Schively sign these three separate notes amounting to \$1,200.00?

A. I did.

*Re-Redirect Examination—*

BY MR. MANAGER EDGE: Q. I have one question: When the bank was paid under these checks, was that a company debt, or a debt that the company paid for Schively?

A. It was a debt that the company paid for Schively.

Q. Paid out of Schively's commissions?

A. Yes, sir.

BY THE PRESIDING OFFICER: Are there any further questions, or are you through with the witness?

BY MR. ISRAEL: I am not through with the witness now. This has developed a phase of the case I did not intend to go into at this time.

*Re-Re-Cross-Examination—*

BY MR. ISRAEL: Do you remember your bookkeeper coming to you about this \$1,200.00 and asking you if to charge it to Ward's account and you said, "No; charge it to Schively's account, because Schively is now president in place of Ward"?

A. I don't quite understand.

Q. When you made the first \$400.00 payment and took up the first note, do you remember the bookkeeper asking you if you would charge it to Ward's account and you said, "No; charge it to Schively's account, because Schively is the president"?

A. Yes, sir.

Q. That is true, is it?

A. That is true.

Q. Now, sir, it is also a fact that these notes were signed by your company as well as by Schively that night in the meeting before Schively was called in to sign them, isn't it?

A. That is my recollection.

Q. Yes, sir. Will you tell the Senate why your company was signing those notes, if they were John Schively's notes and not the company's notes?

A. They were signed to O. K. the transaction.

Q. Yes, sir. And they became a company debt, didn't they?

A. I think they did.

Q. And it was a debt that the company created to get rid of Ward; the debt was to get rid of Ward as president, wasn't it—to get him out of the office and put Schively in?

A. It was to get Schively in.

Q. Yes?

A. That was the idea.

Q. And the company were willing to pay \$1,200.00 to get rid of Ward, to take the chances on signing the notes and make it their transaction; that is true?

A. That is true.

BY MR. MANAGER EDGE: Just a minute, let the witness answer.

Q. What were you going to say?

A. If Schively was willing to have it charged to his commission accounts.

Q. If Schively was willing to have it charged to his commission account?

A. Yes, sir.

Q. Do you mean to say that there was ever any arrangement made whereby he agreed to have it charged to his commission account?

A. I do.

Q. Then he agreed that he would be indebted to the company for this amount of money; was that the idea?

A. I don't quite understand the question, Mr. Israel?

Q. The next day after Mr. Schively was president of the company, the accounts of the company stood this wise: That Ward had resigned; that Schively had been elected; that the company had signed the three notes—bankable notes—in the sum of \$1,200.00 to get rid of Ward; that is the way the account book stood the next day, didn't it?

BY MR. MANAGER EDGE: I object to that. Now that states many transactions, and he is trying to get the witness to say "yes" to something and at the same time include therein a lot of things that the

witness will not admit, and he is putting that question, containing all those features, to the witness and endeavoring to get him to say "yes" to all of it because he is willing to admit a part of it.

BY MR. ISRAEL: I withdraw it.

BY MR. MANAGER EDGE: And I insist—

BY MR. ISRAEL: I withdraw it; I withdraw it.

Q. The way you paid the first note—it was a company note that you paid, wasn't it—signed by your company; it came down to the bank as a company debt, didn't it, down to the office for collection? You have testified to that, if I understand it?

BY MR. MANAGER EDGE: I object to that now. If he wants to read the record to him, that is all right.

Q. After you had paid the debt, if I understand you, you testified that your bookkeeper asked you if he should charge the note to Ward's account and you said, "No; charge it to Schively"?

A. That is a fact.

BY MR. ISRAEL: Yes; that is all.

BY THE PRESIDING OFFICER: I have here two questions and practically to the same end. One, by Senator Cotterill: Was there any other signature or endorsement upon these notes to your knowledge than that of Mr. Schively? And the other question, by Senator Rydstrom: Are you positive that Mr. Schively signed the notes and that these notes were signed by anybody else than by your company? I think the chair may state the question: Mr. Witness, if you know what signatures were upon these notes, state fully?

A. As I remember it, they were first signed by J. H. Schively and the company stamp, Pacific Livestock Association, and signed by myself as manager. That is as I recollect it.

BY SENATOR BASSETT: Mr. President, I desire to submit a question.

BY THE PRESIDING OFFICER: Question by Senator Bassett: Did the company sign three notes as a principal or as an endorser, and were the notes entered on the books of the company?

A. They were entered on the books of the company, I am quite sure, and they were signed as an endorser, or O. K. rather, to the transaction. That is my understanding.

BY MR. MANAGER EDGE: I think perhaps I can make that clear. Was it the intention of the company to pay those notes in case Schively did not pay them?

A. That was not the intention of the company; no, sir.

BY MR. MANAGER EDGE: Then I understand the company did not intend by reason of that stamp to become liable for the payment of those notes, but simply as a sort of acquiescence to the transaction.

A. That is the idea.

BY MR. ISRAEL: Q. Now, Mr. Schrock, that company stamp with your signature was put on the face of that note under the obligation and below the signature of Schively, wasn't it?

A. It was; that is as I remember it.

Q. So that it read, whether it was "We promise to pay" or "I promise to pay," it read down to the end of the promissory note and then contained the signatures of J. H. Schively after your company, per yourself, manager, on the face of the note and not on it's back; that is true, isn't it?

A. That was on the face of the note.

Q. And the notes were entered on the books of your company as a company liability, entered then in your bills payable, wasn't it?

A. I think that that is the fact.

BY MR. ISRAEL: That is all.

BY THE PRESIDING OFFICER: Are there any further questions by any Senator? If not, the witness will be excused.

BY MR. ISRAEL: I want him kept, your honor.

BY THE PRESIDING OFFICER: I understand that. He will remain in attendance upon the trial of this case.

At 11:55 a. m. the court of impeachment took a recess until 1:30 this afternoon.

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### AFTERNOON SESSION.

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The Senate, sitting as a court of impeachment, reconvened at 1:30 p. m.

BY SENATOR PIPER: I move, Mr. President, that the gentlemen who are absent at this time be fined the minimum fine for their absence.

BY SENATOR COTTERILL: I move as an amendment that any of the gentlemen who are not recorded as present under the roll call of the secretary, if they are not present by a quarter of two, the minimum fine may be assessed.

BY SENATOR PRESBY: I think they should be brought before the bar of the Senate and, unless they have a reasonable excuse, be fined.

BY THE PRESIDENT: The question is not debatable, gentlemen. The question is on motion of Senator Cotterill, that if these gentlemen are not present at 1:45, they shall be fined the minimum fine.

BY SENATOR FALCONER: I would like to have the rule read that governs this.

BY SENATOR ALLEN: I desire to be reported as present.

BY SENATOR WHITNEY: I desire the report that I am here.

BY SENATOR EASTHAM: I report present.

BY THE SECRETARY: Rule 22 reads that any member who fails to be present will be considered to be in contempt of the Senate as a court of impeachment and shall be fined not less than five nor more than twenty-five dollars.

BY THE PRESIDENT: The question before the House is the motion of Senator Cotterill, that those who are not present at 1:45 shall be fined.

BY THE SECRETARY: They are all here now, Mr. President.

BY SENATOR PIPER: I insist on having the roll call, and find out if they are all here.

BY SENATOR BOOTH: Under the rule, the offense becomes such when the roll is called. If they do not answer, if they are two minutes late or five minutes late when the roll is called, it comes under the rule.

BY THE PRESIDENT: The senators who were absent at the calling of the roll will be fined \$5 each.

BY SENATOR COTTERILL: I move that the fines just assessed by the members be now remitted.

BY THE PRESIDENT: It is moved and seconded that the fines assessed against these members be now remitted. All those in favor of the motion say "Aye"; contrary "No." The fines are remitted.

BY SENATOR HUXTABLE: I move at this time that the fine paid by Senator Whitney this morning be remitted.

BY SENATOR PIPER: I desire to oppose that motion.

BY THE PRESIDENT: You can ask a question, but cannot debate it, gentlemen.

BY SENATOR PIPER: I desire to ask the question, if it was not a serious proposition when this new rule was adopted? I know that I presented it for a good purpose, and I believe if we did not have this rule we would not have these members here when we need them, and I don't believe at this time in remitting any fines. Any senator as guilty as the senator was this morning for not coming here for a half hour after the roll had been called should be fined. Probably it was just all right to remit the fines on these senators who were here immediately after the roll call, but the fine assessed this morning should be allowed to stand.

BY SENATOR STEVENSON: I move that this question be laid on the table and be taken up immediately after adjournment as a court of impeachment.

BY THE PRESIDENT: Gentlemen, you have heard the motion, that this matter shall be laid on the table until after adjournment as a court of impeachment this evening. All those in favor of the motion say "Aye"; contrary "No." The ayes have it. I will now declare a recess of one minute in order to give the president an opportunity to sign a bill.

BY THE PRESIDENT: Senator Knickerbocker will take the chair.

BY THE PRESIDING OFFICER: The board of managers may proceed.

BY MR. MANAGER EDGE: We have made some examination of the books for the purpose of explanation, and I think we will recall Mr. Schrock to the stand.

BY THE PRESIDING OFFICER: *Gentlemen of the Senate*—While the witness for the board of managers is being called, although I realize that I have no more to say even when sitting in the chair than any other senator, I wish to suggest this: That the senators be not too profuse in the questions which they send up to the desk to be answered by the witness. You must bear in mind that the attorneys on both sides have for some time been going into the facts and into the law,

and it is fair to presume that they will bring up about all the evidence that can be brought up by the questions that they propound.

J. B. Schrock was re-called as a witness on behalf of the complainants:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. Now, Mr. Schrock, I think that we understood you to say that the notes which were given to Mr. Ward were entered on the books of the company. What did you mean by that statement?

A. That they were treated just as any other notes.

Q. Now, for the purpose of explanation, you have an account in your company ledger known as "bills payable," have you not?

A. Yes.

Q. And in that account is entered an item of the note which your company gives whenever it would borrow money or for any purpose give its note to anybody; isn't there a record of that?

A. Well, indeed, I did not know that there was any such record as that kept.

BY MR. MANAGER EDGE: I will try and prove this by this witness, but I may have to call other witnesses on this point.

Q. Now, do you mean to say, Mr. Schrock, that you entered up this \$1,200 in three notes on your books in the same accounts where you entered, made the entry, of the other notes that the company might give in its business?

A. That was my understanding.

Q. That that was entered up in that way?

A. Yes, sir.

Q. Well, now here is the company ledger, is it not?

A. Yes, that is what we called the general agents' ledger.

Q. I call your attention to this account; what account is that?

A. It looks like the "bills payable" account.

Q. Is it, or is it not; you know something about this, do you not? You know whether that is "bills payable" or whether it isn't.

BY MR. ISRAEL: Now, I hesitate to be compelled to protect the witness for the other side, but it seems necessary here.

BY MR. MANAGER EDGE: Well, I think we will take care of that, Mr. Israel.

BY MR. ISRAEL: All right; go to him.

BY MR. MANAGER EDGE: That is the "bills payable" account of the Pacific Live Stock Association, is it not?

A. It looks like it.

Q. Is it or is it not?

A. It is.

Q. It is?

BY THE PRESIDING OFFICER: Now, Mr. Witness, I want you to speak out loud, so the senators can all hear you. The senators want to hear the testimony.

BY MR. MANAGER EDGE: Q. This account is supposed to contain an entry of all of the notes that the company gave, is it not?

BY MR. ISRAEL: That is, if the witness knows of his own knowledge.

A. I don't know of my own knowledge if it contained all the notes or not.

BY MR. MANAGER EDGE: I think we will let that stand, so far as this witness is concerned and we will take up another point.

Q. Now, Mr. Schrock, was Mr. Schively paid all of his salary or commissions during all of the time he worked there? Did you pay him off in full when he got through?

A. We settled up with him in full, or were supposed to.

Q. I will ask you to look at that check, Mr. Schrock; is that your signature?

A. Yes, sir.

Q. And whose else?

A. E. R. Ward's.

Q. And to whom was that check given?

A. That was given to J. H. Schively.

Q. For what purpose, do you remember?

A. Why, I don't remember for what purpose.

BY MR. MANAGER EDGE: We offer this in evidence under article 25, as Exhibit 5.

[Marked "Article 25, Complainants' Exhibit No. 5."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 4245.

SPOKANE, WASH., July 10, 1906.

Pay to the order of J. H. Schively, \$200.00 (two hundred dollars).

PACIFIC LIVE STOCK ASSOCIATION,

To The Old National Bank,

Spokane, Wash.

E. R. WARD, President.

J. B. SCHROCK, Gen'l Mgr.

(Indorsed) J. H. Schively.

BY MR. MANAGER EDGE: Q. What is that check for, Mr. Schrock?

A. This must have been given for commissions.

Q. Whose signature is that to this check.

A. My own.

BY MR. MANAGER EDGE: We offer this as Exhibit 6 under article 25.

[Marked "Article 25, Complainants' Exhibit No. 6."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 4760.

SPOKANE, WASH., Aug. 27, 1906.

Pay to the order of J. H. Schively, \$100.00 (one hundred dollars).

PACIFIC LIVE STOCK ASSOCIATION,

To The Old National Bank,

Spokane, Wash.

....., President.

J. B. SCHROCK, Gen'l Mgr.

(Indorsed) J. H. Schively, Tom A. Williams.

BY MR. MANAGER EDGE: Q. Whose signature is on this check?

A. My own and J. H. Schively.

BY MR. MANAGER EDGE: We offer this in evidence as Exhibit 7, article 25.

[Marked "Article 25, Complainants' Exhibit No. 7."]



BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 5462.

SPOKANE, WASH., Sept. 26, 1906.

Pay to the order of J. H. Schively, \$22.00 (twenty-two and no-100 dollars).

PACIFIC LIVE STOCK ASSOCIATION,

*To The Old National Bank,  
Spokane, Wash.*

J. H. SCHIVELY, *President.*

J. B. SCHROCK, *Gen'l Mgr.*

(Indorsed) J. H. Schively. Pay to the order of Exchange National Bank, Spokane, Wash. Club-Combination Cafe Company, by.....

BY MR. MANAGER EDGE: Q. Whose signature is to this?

A. J. H. Schively and my own.

BY MR. ISRAEL: What was the date of the other exhibit?

BY THE SECRETARY: The date was September 26th, 1906.

BY MR. MANAGER EDGE: We offer this in evidence as Exhibit 8, under article 25.

[Marked "Article 25, Complainants' Exhibit No. 8."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 5069.

SPOKANE, WASH., Sept. 28, 1906.

Pay to the order of J. H. Schively, \$60.00 (sixty and no-100 dollars).

PACIFIC LIVE STOCK ASSOCIATION,

*To The Old National Bank,  
Spokane, Wash.*

J. H. SCHIVELY, *President.*

J. B. SCHROCK, *Gen'l Mgr.*

(Indorsed) J. H. Schively. Pay Old National Bank, Spokane, Wash., or order. D. F. Wetzel Co.

BY MR. MANAGER EDGE: Q. Whose signatures are on this check?

A. J. H. Schively's and my own.

BY MR. MANAGER EDGE: We offer this as Exhibit 9, under article 25.

[Marked "Article 25, Complainants' Exhibit No. 9."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 5077.

SPOKANE, WASH., Sept. 29, 1906.

Pay to the order of J. H. Schively, \$310.10 (three hundred ten and 10-100 dollars).

PACIFIC LIVE STOCK ASSOCIATION,

*To The Old National Bank,  
Spokane, Wash.*

J. H. SCHIVELY, *President.*

J. B. SCHROCK, *Gen'l Mgr.*

(Indorsed) J. H. Schively.

BY MR. MANAGER EDGE: Q. Whose signatures are on this?

A. J. H. Schively's and my own.

BY MR. MANAGER EDGE: We offer this check as Exhibit 10, under article 25.

[Marked "Article 25, Complainants' Exhibit No. 10."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 5135.

SPOKANE, WASH., Oct. 3, 1906.

Pay to the order of J. H. Schively, \$3.00 (three and no-100 dollars).

PACIFIC LIVE STOCK ASSOCIATION,

*To The Old National Bank,  
Spokane, Wash.*

J. H. SCHIVELY, *President.*

J. B. SCHROCK, *Gen'l Mgr.*

(Indorsed) J. H. Schively, Harwick & Kinney.

BY MR. MANAGER EDGE: Q. Whose signature is on this check?  
A. That is my signature.

BY MR. MANAGER EDGE: We offer this as Exhibit 11, under article 25.  
[Marked "Article 25, Complainants' Exhibit No. 11."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 5175.

SPOKANE, WASH., Oct. 8, 1906.

Pay to the order of J. H. Schively, \$260.50 (two hundred and sixty 50-100 dollars).

To The Old National Bank,  
Spokane, Wash.

PACIFIC LIVE STOCK ASSOCIATION,  
....., President.

J. B. SCHROCK, Gen'l Mgr.

(Indorsed) J. H. Schively, J. H. Wilmot, Henry F. Sorg.

BY MR. MANAGER EDGE: Q. Whose signature is that on that check?  
A. That is my signature.

BY MR. MANAGER EDGE: We offer this as Exhibit 12, under article 25.  
[Marked "Article 25, Complainants' Exhibit No. 12."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 5167.

SPOKANE, WASH., Oct. 6, 1906.

Pay to the order of J. H. Schively, \$50.00 (fifty no-100 dollars).

To The Old National Bank,  
Spokane, Wash.

PACIFIC LIVE STOCK ASSOCIATION,  
....., President.

J. B. SCHROCK, Gen'l Mgr.

(Indorsed) J. H. Schively, Tom A. Williams.

BY MR. MANAGER EDGE: Q. Whose signature is this?  
A. That is mine.

BY MR. MANAGER EDGE: We offer this in evidence as Exhibit 13,  
under article 25.

[Marked "Article 25, Complainants' Exhibit No. 13."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 5174.

SPOKANE, WASH., Oct. 8, 1906.

Pay to the order of J. H. Schively, \$40.00 (forty dollars).

To The Old National Bank,  
Spokane, Wash.

PACIFIC LIVE STOCK ASSOCIATION,  
....., President.

J. B. SCHROCK, Gen'l Mgr.

(Indorsed) J. H. Schively, W. J. Walker, Gertie M. Walker.

BY MR. MANAGER EDGE: Now, I desire to state that those items will be kept separate from those that I desire to offer now, as they are introduced for a different purpose. These are offered in support of the 24th article, in reference to the charging excessive fees for examination.

Q. Whose signature is upon that check?

A. E. R. Ward and myself.

BY THE PRESIDING OFFICER: Have there been any exhibits introduced in evidence under article 24?

BY MR. MANAGER EDGE: I don't think there have been.

BY THE PRESIDING OFFICER: This will be marked "Article 24, Complainants' Exhibit 1," and it may be introduced in evidence.

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 3921.

SPOKANE, WASH., June 13, 1906.

Pay to the order of J. H. Schively, \$200 (two hundred and no-100 dollars).

To The Old National Bank,  
Spokane, Wash.

PACIFIC LIVE STOCK ASSOCIATION,  
E. R. WARD, *President*.  
J. B. SCHROCK, *Gen'l Mgr.*

(Indorsed) J. H. Schively. Pay to the order of Traders' National Bank, Spokane, Wash. Capital National Bank, Olympia, Wash.; W. J. Foster, cashier. Paid through clearing house, June 20; Trader's National Bank, Spokane, Wash.

BY MR. MANAGER EDGE: Q. Whose signatures are on that check?  
A. E. R. Ward's and my own.

BY MR. MANAGER EDGE: We offer this exhibit under article 24, as Exhibit 2.

[Marked "Article 24, Complainants' Exhibit No. 2."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 2419.

SPOKANE, WASH., Jan. 30, 1906.

Pay to the order of J. H. Schively, \$150 (one hundred fifty and no-100 dollars).

To Traders' National Bank,  
Spokane, Wash.

PACIFIC LIVE STOCK ASSOCIATION,  
E. R. WARD,  
J. B. SCHROCK.

(Indorsed) Pay to Gill and Gill, J. H. Schively; Gill & Gill, Gill Bros. Pay Trader's National Bank of Spokane, Wash., or order; Seattle National Bank, S. Foster Kelley, cashier.

BY MR. MANAGER EDGE: Q. Whose signature is that?  
A. E. R. Ward's and my own.

BY MR. MANAGER EDGE: We offer this as Exhibit 3, under article 24.  
[Marked "Article 24, Complainants' Exhibit No. 3."]

BY THE SECRETARY:

PACIFIC LIVE STOCK ASSOCIATION. No. 4024.

SPOKANE, WASH., June 21, 1906.

Pay to the order of J. H. Schively, \$74.25 (seventy-four and 25-100 dollars).

To The Old National Bank,  
Spokane, Wash.

PACIFIC LIVE STOCK ASSOCIATION,  
E. R. WARD,  
J. B. SCHROCK.

(Indorsed) J. H. Schively. Pay to the order of Trader's National Bank, Spokane, Wash.; Capital National Bank, Olympia, Wash.; W. J. Foster, cashier. Paid through clearing house, June 25, 1906. Traders' National Bank, Spokane, Wash.

*Cross-Examination—*

BY MR. ISRAEL: [On recall.] Q. Mr. Schrock, have you any other checks between July 10, 1907, and October 9, 1907, which were payments to Mr. Schively?

A. I am sure I don't know as to that.

BY MR. MANAGER EDGE: Here is a small check of \$1.88, but, as I

understand it, this was for some stamps Mr. Schively purchased in the meantime; had nothing to do with this.

BY MR. ISRAEL: Are these all of the salary checks that there are, Mr. Edge?

BY MR. MANAGER EDGE: Those, together with the three \$400 checks, make up, so far as I know, all of the money received by him between the 1st of July and the 8th of October. I think these were all of them. They foot up, together with the three to the Fidelity Nat'l. Bank, \$2,245.60.

BY MR. MANAGER EDGE: Those, including the three four-hundred-dollar checks, which are in evidence, and that excludes the three checks which were in support of article 24, of two hundred dollars, one hundred and fifty dollars, and seventy-four and 25-100 dollars. Those are in the main all of the fees of Mr. Schively as insurance commissioner.

BY MR. ISRAEL: That is, you think they are?

BY MR. MANAGER EDGE: That has not been contradicted yet by any evidence.

BY MR. ISRAEL: That has not been shown by any evidence, you mean.

BY MR. MANAGER EDGE: We do not care to discuss that. If you have any questions to ask, direct them to the witness and go on with the case.

[Witness excused.]

BY MR. MANAGER EDGE: I will call Mr. S. G. Copeland.

Mr. S. G. Copeland, a witness produced on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. State your full name.

A. S. G. Copeland.

Q. Have you ever been in any way connected with the Pacific Live Stock Association?

A. Yes, sir.

Q. In what capacity?

A. As trustee.

Q. Were you in that office during the spring and summer of 1906?

A. Yes, sir.

Q. Do you know Mr. J. H. Schively?

A. Yes, sir.

Q. Were you present on the evening of July 10th at a meeting of the trustees of that company?

A. Yes, sir.

Q. Were you there when they discussed the resignation of Mr. Ward and the election of Mr. Schively?

A. Yes, sir.

Q. State, if you know, by what means Mr. Schively became a trustee of the company, and Mr. Ward resigned as president and trustee?

A. Mr. Schively bought Mr. Ward out, I believe.

BY MR. MANAGER EDGE: Please testify louder, so that all of the senators in the back of the room can hear you.

A. Mr. Schively bought Mr. Ward out.

Q. Were you present when three notes were drawn up and signed?

A. Yes, sir.

Q. Did or did not Mr. Schively sign those notes, or any of them?

A. Yes, he did.

Q. Was there anything said at that time as to what basis Mr. Schively was to be paid upon?

A. Why, it was talked over when they were making the arrangements.

Q. What arrangement was Mr. Schively to have with the company?

A. Why, he was to receive the same privileges that Mr. Ward did.

Q. Had Mr. Ward been getting a salary or commissions?

A. Getting commissions.

Q. Was there anything said there about putting Mr. Schively on a flat salary?

A. No, sir.

Q. So far as you know, as trustee, during any of the time when Mr. Schively was connected with the company, did he receive a flat salary, or was he paid on a commission basis?

A. Paid on a commission basis, so far as I know.

Q. Did you have any conversation with Mr. Ward before this meeting, or with Mr. Schively, with reference to this deal that Mr. Schively was making with Mr. Ward?

A. Yes, it was commonly talked around the office for a day or so.

Q. What was commonly talked?

A. Their arrangement, their deal.

Q. Was the company going to buy Mr. Ward out, or was Mr. Schively going to buy Mr. Ward out?

A. Mr. Schively.

Q. Was it your understanding that the company was to pay these notes or that Mr. Schively was going to pay them?

BY MR. ISRAEL: Wait a moment. The witness hesitates, as well he may, and I should have been on my feet even before he had time to hesitate. Mr. President—

BY MR. MANAGER EDGE: I will strike that question, to save time.

Q. Do you know how these notes were paid?

A. No, sir.

Q. You did not take much of an active part in the office work, did you, Mr. Copeland?

A. No, sir.

Q. Did you see Mr. Schively sign these notes?

A. I did.

Q. What was done with them?

A. Turned over to Mr. Ward.

Q. You heard the minutes of the meeting here yesterday afternoon, did you?

A. Yes.

Q. Was that as detailed substantially—what occurred at that meeting?

A. Yes, sir.

*Cross Examination—*

BY MR. ISRAEL: Mr. Secretary, let me have that minute book. Q. Just look at this exhibit. I do not know what exhibit number it was marked; it does not seem to have received any mark—What exhibit is it, for the purpose of keeping this transcript straight.

BY THE SECRETARY: It has been marked "Article 25, Complainants' Exhibit No. 1."

Q. Referring to whatever exhibit this is, it is the purported minutes of a meeting held on July 10th, 1906, of the trustees of the Pacific Live Stock Association. Just look at these minutes a moment and glance over them and state if they are the minutes you referred to in telling counsel they were correct in the recitation of what occurred that night.

BY MR. EDGE: I asked if they were substantially what occurred that night.

BY MR. ISRAEL: Yes, substantially, then.

[*Witness examines book.*]

Q. Those are the minutes?

A. Yes.

Q. There was present then at that meeting E. R. Ward, Mr. Schrock, Mr. Hunter, and yourself?

A. And Mr. Schively.

Q. Was Mr. Schively there?

A. Yes, sir.

Q. When the meeting was taken up?

A. I do not know whether he was there when the meeting was taken up or not, but he was there during the meeting.

Q. Don't you know that he was not there when the meeting was called to order?

A. Well, I am not sure whether he was there then or not.

Q. Don't you know that you were sent out as one of the committee to bring him just before the meeting closed?

A. I went out for him, but I don't remember whether it was before the meeting was called or afterwards.

Q. Was the bookkeeper there that night.

A. Well, I am not certain whether he was or not.

Q. Who prepared the notes that were signed there?

A. Well, I could not tell who did that.

Q. How long was this meeting in session that night?

A. Probably an hour or two hours—something like that.

Q. An hour or two hours?

A. Yes.

Q. How much of the time were you present at the meeting?

A. Well, I do not know whether I went out for Mr. Schively during the meeting or before. I cannot say whether I was out during the meeting or not.

Q. Your recollection is not very clear as to what occurred there that night, is it?

A. Well, fairly, yes.

Q. Well, then, how much of the time were you present at this hour-or-two-hour meeting?

A. Well, I was not out over ten minutes; if I went out for him during the meeting, I was not out over ten or fifteen minutes.

Q. How long had you been at the meeting before you went out for Mr. Schively?

A. I do not know whether I went out before the meeting or during the meeting.

Q. Is it not a fact that Mr. Schively did not come into the meeting until just before it closed? Don't you remember that?

A. No, sir.

Q. You have no recollection, then, of coming in with Mr. Schively just before the meeting broke up?

A. He was there quite a while before it broke up.

Q. What occurred after he came in?

A. Mr. Ward resigned. He handed in his resignation.

Q. Then were the notes made out?

A. Yes, I think they were.

Q. Who made them out?

A. I cannot tell you now who did make them out.

Q. Did you see them?

A. Yes, sir.

Q. Who signed them?

A. Mr. Schively signed them.

Q. Who else?

A. I do not know of anyone else signing them, unless the company's stamp was put on them, and I am not sure about that.

Q. You are not sure about that?

A. No, sir.

Q. Were you sitting at the table where it was done?

A. I was in the room; it was a small room.

Q. Who had possession of this company's stamp?

A. Mr. Schrock.

Q. Where was it kept?

A. He kept it in his desk.

Q. Where was his desk—in this room?

A. No, sir; it was out in the other room.

Q. It was out in the other room?

A. The main office.

Q. The main office; is that where the bookkeeper stayed?

A. Yes, sir.

Q. Did Mr. Schrock go out and get the stamp?

A. I do not remember whether he did or not.

Q. What makes you remember it had the stamp on it?

A. I said I was not sure about that.

Q. You said you were not sure about that?

A. No, sir; I am not.

Q. Then, you are not positive now yourself who was giving the notes?

A. How was that?

Q. You are not positive now, then, who was giving the notes?

A. Yes.

Q. Who was giving the notes?

A. Mr. Schively was making the notes.

Q. Anyone else?

A. Well, I said I was not positive whether the company's stamp—

Q. It was Mr. Schively's transaction and not the company's transaction?

A. Yes, sir.

Q. The company had nothing to do with it?

A. Nothing to do with the deal he had with Ward.

Q. That was a deal between him and Schively?

A. Yes, sir.

Q. The company had nothing to do with it?

A. No, sir.

Q. Part of the transaction between Schively and Mr. Ward took place there in that meeting room?

A. They had been dickering for two or three days.

Q. But the notes were made out in the Ward room?

A. Yes, I think they were.

Q. And they were made out after Mr. Schively came in?

A. I do not know whether they were made out after Mr. Schively came in, but I think they were.

Q. And you do not know who made them out?

A. No, sir.

Q. You heard Mr. Schrock's testimony this morning?

A. Yes, sir.

Q. Did you ever have a talk with Mr. Schively after this transaction about his salary?

A. Yes, I think Mr. Schively had a talk about salaries.

Q. At that time you told Mr. Schively you were limited to four hundred dollars a month, didn't you?

A. I might have told him I was limited to four hundred dollars.

Q. And you did tell him that you were limited to four hundred dollars a month, didn't you?

A. I expect I did, because that was the fact.

Q. In that conversation you and Mr. Schively were both talking about the fact that you considered that the trustees were getting too much money; that they were taking too much salary. You both agreed to that at that conversation, didn't you?

A. Yes.

Q. And you did consider at that time that they were taking too much and that they ought to take less?

A. Yes.

Q. And Mr. Schively agreed with you in that conversation?

A. He did.

Q. Now, after Mr. Schively was located— Let us go back for a moment. You wanted to see Mr. Schively president and Mr. Ward out, didn't you?

A. Why, yes, I did.

Q. You had been arranging with the other directors to have Mr. Schively come in as trustee before there was any thought of him taking Mr. Ward's place?

A. No, sir.

Q. You were not?

A. No, sir.

Q. You were the one they had under consideration for removal. You did not know that the other trustees were discussing removing you and putting Mr. Schively in your place?

A. No, sir.

Q. Now, after Mr. Schively was elected president, did you ever say to Mr. Schively in effect, "Now that you have been elected president, we have all agreed to go on a flat basis of four hundred dollars a month?" Didn't you say that to Mr. Schively after he was elected president?

A. No, sir.



Q. Would you say positively that you did not?

A. No, sir.

Q. Did you ever have any talk with him at all afterwards, after his election, as to a reasonable compensation for everybody?

A. Yes.

Q. And did you state to him that four hundred dollars would be enough?

A. I think I did.

Q. And did you not also state to him that that was all you were getting?

A. Yes, sir.

Q. And did you not also state to him that it was agreed that that was all any of you should take?

A. No, sir.

Q. You don't remember that?

A. No, sir.

Q. Who kept the books of this corporation during those times?

A. Mr. Shallenberger was head bookkeeper.

Q. Did you ever examine the books?

A. No, sir.

Q. Mr. Schrock was the manager?

A. Yes, sir.

Q. Did Mr. Shallenberger get his orders from Mr. Schrock?

A. Yes.

Q. Did you during the time that Mr. Schively was president ever go and examine your account with the bookkeeper to see what condition it was in?

A. I suppose I have.

Q. Do you recollect ever having done so?

A. Yes, sir.

Q. When Mr. Schively came in that night, he was notified by those who were present there that he had been elected president, wasn't he?

A. No, sir; he was not elected president until after he came in.

Q. Mr. Schrock is wrong about that?

A. Mr. Schively was elected president after he came in.

Q. He was not brought in, then, just before the meeting adjourned?

A. Well, some time before it adjourned.

Q. Well, he was not brought in at a time when there was anything more to be done excepting to sign the notes and then adjourn?

A. No, sir; I don't think so.

Q. Do you recollect that Mr. Schively was on his way to the train when he was brought in?

A. He was on his way to the hotel.

Q. Where?

A. He was down at the hotel.

Q. Did you find him down there?

A. Yes, sir.

Q. Did you go out after him?

A. Yes, sir.

Q. Who sent you out?

A. I do not remember now.

Q. Who requested you to go out and get him?

A. I do not remember. He had not showed up there, and somebody said, "Go after him and see if you can find him." I do not remember who it was.

Q. What did you meet for the purpose of doing that night?

A. Mr. Ward was going to resign and we were going to elect Mr. Schively as director.

Q. And had Ward and Mr. Schively been elected?

A. No, sir, not before the meeting.

Q. You found him at the hotel?

A. Yes, sir.

Q. Was he getting ready to go to the depot?

A. Sir?

Q. Was he getting ready to go to the depot to take the train for Olympia?

A. No, sir.

Q. He was not?

A. No, sir.

Q. Have you ever seen these notes?

A. Which, the Schively notes?

Q. Yes?

A. Not since that night.

Q. Did you examine them that night?

A. No, sir.

Q. Are you under an indictment at the present time by the grand jury of Spokane county for larceny by embezzlement?

A. No, sir.

Q. Have the matters of your company been under investigation by that grand jury, looking to indicting any of its officers for larceny by embezzlement?

BY MR. MANAGER EDGE: I object to that.

BY MR. LEE: I object to that.

BY MR. MANAGER EDGE: I object to that on the ground that it is not proper cross-examination.

BY MR. ISRAEL: It is for the purpose of testing the credibility of this witness.

BY THE PRESIDING OFFICER: What was that question?

[*Question read.*]

BY MR. MANAGER EDGE: I object to that on the ground that it is improper cross-examination. It does not tend in any way to affect the credibility of this witness. It could not make any difference whether the grand jury did or did not have them under investigation, and even if they did have them under investigation it could not in any way affect the testimony which he has given.

BY THE PRESIDING OFFICER: The objection will be sustained.

*Redirect Examination—*

BY MR. MANAGER EDGE: I wish to ask a question I omitted on direct examination.

Q. Were you present, Mr. Copeland, at a meeting of the trustees that was held on August 4th, 1906, some three weeks after this meeting about which we had been talking?

A. I think so.

Q. I will direct your attention to it more particularly as the meeting at which Mr. Schively took and filed his oath of office?

A. Yes, sir; I was there.

Q. Do you identify this book, Mr. Copeland? [*Shows book to witness.*] I will state that this has been identified as the minute book of the company before.

A. Yes, sir.

BY MR. ISRAEL: How is that going to help identify it?

BY MR. MANAGER EDGE: It has been identified.

BY MR. ISRAEL: I know, but how could the fact it has been help him to identify it?

BY MR. MANAGER EDGE: Well, as long as the evidence shows it is the book, it does not make any difference. He can, if I desire to take up the time to go ahead with the matter, but I was simply expediting matters.

Q. Now, there appears here a resolution, Mr. Copeland, that was adopted by the company at that meeting on August 4th, as follows: "Resolved, That it was the sense and intention of the action whereby Mr. Schively was elected to succeed Mr. Ward that Mr. Schively should have the same rights that Mr. Ward had had and equal with the other trustees with respect to compensation." Moved and seconded that this resolution be unanimously adopted. Motion carried." I will ask you whether or not that resolution was moved and carried at that meeting?

A. Yes, sir.

*Re-Cross Examination—*

BY MR. ISRAEL: Q You have not at the present time any distinct recollection as to what was done at any of these particular meetings, have you? Would you recollect, independent of that book, that there was such a resolution passed?

A. Yes, sir.

Q. You would?

A. Yes.

Q. Was it after this or before that you had your talk with Schively about the \$400.00 a month?

BY MR. MANAGER EDGE: I object to that, if the court please. The witness has not testified that he had any conversation with Schively in reference to \$400.00 a month. Counsel is endeavoring to get the witness to believe that he has testified that, and he has not.

BY MR. ISRAEL: Now, if you are all through, this witness has testified and he will corroborate me—that he suggested to Mr. Schively that \$400.00 a month was enough for any of them; do you remember that?

BY MR. MANAGER EDGE: I don't recall that that was the testimony.

BY MR. ISRAEL: [*To witness*] You recall it, you remember?

A. Yes, sir.

Q. Now, was that conversation before or after this resolution?

A. I think it was after.

BY MR. ISRAEL: Yes. That is all.

[*Witness excused.*]

R. J. Hunter, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: Q Now, Mr. Hunter, you will have to speak unusually loud, in order that every one may hear what you say.

Q. State your name.

A. R. J. Hunter.

Q. Do you know of the company known as the Pacific Livestock Association?

A. Yes, sir.

Q. Were you employed by that company during the spring and summer of 1906?

A. Yes, sir.

Q. Were you there before and after the time Mr. Schively was connected with it?

A. Yes, sir.

Q. And during the time that he was?

A. Yes, sir.

Q. In what capacity?

A. As a bookkeeper.

Q. You will have to speak distinctly. How many bookkeepers did they have?

A. We had two.

Q. Who was the other one?

A. Mr. Shallenberger.

Q. What part of the bookkeeping did you do?

A. I did the general work.

Q. Are you familiar with the accounts of the company as shown by their books during that time?

A. Yes, sir.

Q. Upon what basis were the trustees of the company paid at that time, a salary or a commission?

A. They were paid upon a commission basis.

Q. About how much did it amount to per month during that time?

A. About \$600.00 per month.

Q. I will let you take that book. [*Hands book to witness.*] What is that book?

A. This is the general ledger of the company.

Q. The Pacific Livestock Association?

A. Yes, sir.

Q. Does that show the ledger accounts of the company during the year 1906?

A. Yes, sir.

Q. What account is that on page 275?

A. The account of J. H. Schively.

Q. What does that account cover?

A. It covers commission credits and cash charges.

Q. What do you mean by commissions?

A. I mean the commissions earned on the production of business based on a per centage of three mills on the dollar, indemnity written.

Q. According to that account, how much was paid him during that year?

A. During the year 1906?

- Q. Yes.
- A. The totals show \$2,597.35. We will have to deduct from that a correction of \$351.00.
- Q. What did that \$351.00 represent?
- A. It represents a correction, transfer made in the account.
- Q. What account should that \$351.75 be charged to?
- A. To insurance department fees.
- Q. Who were those fees paid to?
- A. To the best of my knowledge, they were paid to J. H. Schively.
- Q. For what purpose?
- A. For insurance department fees.
- Q. And the remainder of the \$2,597.00, or \$2,597.00 less \$351.00, was paid to him for what purpose?
- A. For commissions.
- Q. Who made those entries?
- A. I did.
- Q. Do you know anything about the \$400.00 per month that was paid the Fidelity National Bank?
- A. Yes, sir.
- Q. What was that paid the bank for?
- A. To take up three notes payable in favor of Mr. Ward.
- Q. Whose notes were they, if you know?
- A. Why, I can't say positively, because I don't know that I ever saw the notes.
- Q. To whom was the checks charged that were used in taking up these notes.
- A. The checks were charged to account of J. H. Schively.
- Q. How did you happen to charge them to that account?
- A. It was my instructions to do so.
- Q. From whom did you receive instructions?
- A. From Mr. Shallenberger.
- Q. Now, when your company executed notes for any purpose whatever, would you make an entry in your ledger?
- A. Yes, sir.
- Q. Touching upon those notes. Where did you make that entry—under what account?
- A. "Bills payable."
- Q. Please turn to that account. [*Witness does so.*] You have heard the testimony of witnesses preceding you on the stand in reference to the three notes that were executed by Mr. Schively to Mr. Ward and the testimony in reference to the company having in some way signed those notes either as insurer or indorser; you heard that question?
- A. Yes, sir.
- Q. If those notes had been a liability of the company, and executed by the company, and intended to be paid by the company, would an entry have been made in that account of "bills payable" which you have before you?
- A. Yes, sir, it would.
- Q. Is there any entry there of those notes?
- A. No, sir, not to my knowledge.
- Q. Who directed you to charge these three \$400.00 checks to Mr. Schively's account.
- A. I received my instructions from the check book, from the stubs, from which I make my entries in the cash book.

BY THE PRESIDING OFFICER: From which?

A. From the check book stub.

Q. Take, for instance, the check issued on September 5th in favor of the Fidelity National Bank. Who drew that check; can you tell from the handwriting?

A. Mr. Shallenberger.

Q. I will ask you whether or not that is the check stub that corresponds to the check? [*Hands book to witness.*]

A. Yes, sir.

BY MR. MANAGER EDGE: I will offer this portion of the check book in evidence, the check stub.

BY MR. ISRAEL: No objection.

Q. Just read that check stub.

A. "Check 4820, dated September 5th, 1906. Payable to the Fidelity National Bank. Amount, \$400.00. Charge account J. H. Schively."

BY MR. ISRAEL: Where do you get the word "charge"? He asked you to read it.

A. "Account J. H. Schively." Strike out the word "charge."

[*Paper marked "Article 25, Complainants' Exhibit 14."*]

Q. I will ask you whether or not the check stub that appears on that page of the check book is the stub that corresponds to this check I have here dated October 3rd, in favor of the Fidelity National Bank, in the sum of \$400.00?

A. Yes, sir, it is.

BY MR. MANAGER EDGE: I will offer that in evidence. You may read that which appears on the stub of that check book.

No. 5134. 10-3-06. Fidelity National Bank. \$400. Account J. H. Schively. Part of Ward notes."

[*Paper marked "Article 25, Complainants' Exhibit 15."*]

Q. Turn again to the account of Mr. Schively. In reference to that item of \$351.75, which was erroneously charged against him as salary account, state to what that should have been charged.

A. It should have been charged to insurance department fees.

Q. Can you tell from any of the books here why that was paid to the insurance department or from your own knowledge why it was?

A. Well, I will have to look up the items.

Q. Will you kindly refer to the proper book, Mr. Hunter, and ascertain if you can, what that was paid for?

A. The entry here is a correction itself, in the first place.

Q. Well, the first entry—I mean the first entry touching the payment of the \$35.00?

A. I will have to look up those checks to get the information.

BY MR. MANAGER EDGE: If the court desires to suspend for a few minutes, we can put in the time to some advantage.

BY THE PRESIDING OFFICER: Very well. This court will now take a recess for ten minutes.

BY MR. MANAGER EDGE: Q. Mr. Hunter look at this check, dated June 13, 1906, in the sum of \$200, payable to J. H. Schively and indorsed upon the back "J. H. Schively," and I will ask you if you know what that money was paid Mr. Schively for on June 13th; that is about a month before he became president?

A. For the examination fees.

Q. For the examination of the company?

A. Yes.

Q. I hand you another check dated January 30, 1906, about five or six months previous to this, in the sum of \$150, payable to J. H. Schively, and indorsed on the back by Mr. Schively, and ask you if you know for what purpose that money was paid Mr. Schively?

A. For examination fees.

Q. Here is another check of date June 26, 1906, about two or three weeks before he became president, in the sum of \$74.25. Can you state from your knowledge or from looking at the books what that was paid to him for?

A. That was paid for traveling expenses.

Q. Now, there is another item of \$77.50 that appears upon the account of the insurance department of about the same date. It is of June 21. Do you recall what that was paid for?

A. I have it distinguished insurance department fees. I wouldn't say for sure whether it was department fees.

Q. Or examination fees? Now speak up loud, Hr. Hunter, so that all can hear.

A. Well, I assume that this is insurance department fees. I can't tell whether this is an examination fee or any other fee along that line.

Q. State, if you know, for what purpose you generally paid the insurance department money, if you can tell from your book or from your own knowledge?

A. For examination of the company's books.

Q. Sometimes a license?

A. License and taxes.

Q. Well, the taxes were not paid to the insurance commissioner; they were generally paid to the state treasurer, were they not?

A. Generally paid to the state treasurer, yes.

Q. Now do you recall the time Mr. Schively settled up with the company, on October 8, or about that time?

A. Yes, sir.

Q. Who was it that went over the account with him and settled it with him?

A. I was one of the parties.

Q. I will ask you whether or not at that time you drew off a statement of his ledger account showing the itemized statement of the checks that had been given him on account of his commissions and showing these three \$400 checks which your company had paid the Fidelity National Bank; did you draw off such a statement?

A. Yes.

Q. I will ask you if you recognize the statement I hand you?

A. Yes, I do.

Q. Is that the statement that was drawn off by you at the time the company settled with Mr. Schively?

A. Yes.

Q. I will ask you if you know who made the lead-pencil notation on that statement? Do you recognize the handwriting that made them?

A. Yes.

Q. Whose handwriting is it?

A. J. H. Schively's.

Q. How did he happen to make those notes on it, do you know?

A. Why, there was some question as regards the account being in balance, and these notations were made by Mr. Schively, I believe, to

prove that the account was not right—that is to say a certain amount had been charged him which should not have been charged in the account.

Q. That account at that time showed that he was charged with three \$400 checks that had been paid to the Fidelity Bank, did it not?

A. Yes.

Q. And that was in that statement when it was submitted to him and he checked it over at the time he settled up with he company?

A. Yes.

Q. Did he a that time make any objections to these three \$400 items being in this account—state that they were wrongfully charged to him?

A. I cannot say that he did to these particular \$400 items, but he did object to a balance due the company of \$400 at that time.

Q. And what was that balance made up of?

A. It was made up of the items we have just gone over, amounting to \$351.75.

Q. He claimed that the \$351.75 should have been charged to the insurance company and not to him personally?

A. Yes.

Q. Or the insurance department and not to him personally?

A. Yes.

Q. And the dispute was not directed to either one of the three \$400 checks which the company showed had been paid to the bank for those notes?

A. No, sir.

Q. And he raised no question as to these three checks at that time or at any time, so far as you know?

A. No, sir.

Q. State, if you can, from that statement on the books, how much commissions were credited to him during the months of July, August and September, up until the time he quit.

A. \$2,245.60.

Q. Just refer to the original ledger, Mr. Hunter, and enumerate the amount for each month. Page 275 is Schively's account; just read them off from the book.

A. During the month; shall I read these each month?

Q. What was credited to him each month?

A. July 31st, 1906, by commissions, \$600; Aug. 31, by commissions, \$563.65; Sept. 24, cash \$2; Sept. 30, commissions, \$598.70; October 8, credit Bennington, \$400; Oct. 8, a credit of \$30 to Schrock; October 8, another credit of commission, \$36.35; on the same date, another commission item of \$14.90, and on October 8, there was given a credit to Mr. Schively's account, a correction, of \$351.75.

Q. He was credited with \$351.75 in order to square the account, he having been charged erroneously with the \$351.75, in the first place; that was put on the credit side to make the account straight?

A. Yes.

Q. Was that \$351 transferred to the account you had with the insurance commissioner at that time?

A. I didn't catch the question.

Q. At the time you credited Schively with it, did you not charge it back to the proper account—insurance commissioner account—where it should have been in the first place?

A. Yes, it had no business appearing in that account at any time.



Q. Now, Mr. Schively sold out, or made a deal with Bennington, along about the time that item is shown there?

A. Yes.

Q. And Bennington came into the company?

A. Yes, that is my understanding.

Q. Did Mr. Schively at all times during the time he was president have access to this ledger?

A. Yes.

Q. Did he ever complain to you that you had not credited him up each month with \$400 flat salary?

A. No, sir, I can't say that he did.

BY MR. MANAGER EDGE: We will detach this statement now and offer it in evidence as Exhibit 16 under article 25.

[*Paper marked "Article 25, Complainants' Exhibit No. 16."*]

*Cross-Examination—*

BY MR. ISRAEL: Q. I call your attention, Mr. Witness, to a check dated October 8, 1906—The Pacific Livestock Association, J. B. Schrock, Gen. Mgr., to J. H. Schively, for \$260.50; it is Exhibit 11 of article 25. Will you tell me whether or not that item appears in the ledger account as balance here of J. H. Schively?

A. This particular item, the check, does not appear in the ledger; it appears as a total.

Q. Does it make any part of the debit charges in the ledger?

A. Yes, sir.

Q. Show me which one.

A. October 8th.

Q. Now, will you find the item in the original?

A. Check 5175, \$260.50.

Q. That is your cash book?

A. That is the cash book.

Q. Where did you get that charge onto the cash book?

A. From the check stub.

Q. Now, this stub of this check is simply "October 8, 1906, J. H. Schively, \$260.50," and is under no particular account except J. H. Schively. There is no account stated in the stub to be charged to him, but simply the fact that the check was given to J. H. Schively.

A. I will state here, if I may, that on such occasions I would call the attention of the party who made out the check and would ask what account that was to be charged to. And I would be informed that was to be charged to J. H. Schively.

Q. You got instructions from Mr. Schrock to charge that particular check to J. H. Schively?

A. Yes, sir.

Q. Now, you were not the chief bookkeeper there, were you?

A. No, sir, I was not.

Q. Who did you take your orders from?

A. Usually from Mr. Shallenberger or Mr. Schrock.

Q. Would you take orders from Mr. Shallenberger to charge these items to the Schively account?

A. Yes, sir.

Q. That is all the personal knowledge you had whether it was right or wrong to charge that to that account?

A. Yes, sir.

Q. Now, under the system of disbursement of moneys of this Pa-

cific Live Stock Association, what check did the bookkeeper have as to the real purpose for which each check was drawn, outside of the statement of Mr. Schrock?

A. Well, they had notations on the check stubs.

Q. Mr. Schrock made those, didn't he?

A. He should of. In that instance there was no notation made.

Q. You don't see what I am driving at. You had to depend entirely upon Mr. Schrock's notations upon the stub of the checks as to the purpose for which the money had been spent or the account to which it was to be charged?

A. Yes, sir.

Q. That item was not carried in any day book or in any journal?

A. No, sir.

Q. It was carried from the stub books directly to the cash books?

A. Yes, sir.

Q. And carried from the cash book to the ledger?

A. Yes, sir.

Q. If J. B. Schrock drew a check for two hundred to J. H. Schively for personal services—now this is a supposititious case—supposing he did draw a check to J. H. Schively for two hundred dollars for, or say, for services rendered by Mr. Schively to him, and noted on the stub "examination fee," you would then carry that into your cash book and from the cash book to the ledger as a proper disbursement against the expense account of examinations, would you not?

A. Yes.

Q. And there would be no check on it excepting Mr. Schrock's word regarding it?

A. And his notation on the stub.

Q. Well, that would also be his written word?

A. Yes, sir.

Q. Did you ever have charge as assistant bookkeeper of the canceled bills payable of the company's in the office?

A. No, sir.

Q. Did you ever have charge of the bills receivable?

A. No, sir.

Q. Who had those in charge?

A. Mr. S. Almberg, note clerk.

Q. What was his position?

A. He had charge of the notes—collections.

Q. Under the supervision of Mr. Schrock?

A. Yes, sir.

Q. Who had charge of the bills payable?

A. I kept the account.

Q. From where did you get your information?

A. From Mr. Shallenberger.

Q. From Mr. Shallenberger?

A. Yes.

Q. From where does Mr. Shallenberger get his information?

A. From the manager, I presume.

Q. Mr. Schrock?

A. Yes, sir.

Q. Then, Mr. Schrock would be the man who would know the purpose for which each note was given, would he not?

A. Yes, I think so.

Q. Mr. Schrock would be the man who would know whether the note was a company obligation or a private obligation?

A. Yes, sir.

Q. If Mr. Schrock gave a note for the company, that note would not appear in the bills receivable without he reported the fact to Mr. Shallenberger or Mr. Shallenberger ordered you to put it into the bills receivable?

A. Let me understand.

Q. Supposing Mr. Schrock gave a note—to Mr. Lee for four hundred dollars, and signed the company's name to it, and then turned the note over to the party that it was made payable to—that is, to Mr. Lee—you would have no record of it for the purpose of carrying it into the "bills receivable" without Mr. Schrock or some one in the company reported the fact to the bookkeeper's desk?

A. No, sir, I would not have any way—you mean "bills payable"?

Q. Yes, "bills payable." You would not—you would have no way to know of its existence?

A. No.

Q. Now then, if the company, through Mr. Schrock, issued a check to Mr. Lee, taking up that note, and you found the stub in the check book informing you that the check had been issued for that amount of money, you would have to ascertain if it did not appear in the "bills payable"; and if there was no notation of that stub for the "bills payable," you would have to ascertain whose account to charge it to, would you not?

A. Yes, sir.

Q. And you would have to be governed in charging it to the account of the person by what Mr. Schrock, or whoever had the knowledge, told you was the proper account?

A. Yes, sir.

Q. You had no check upon those matters?

A. No, sir.

Q. I want the stub of those four-hundred-dollar checks. Now then, when you take a check, No. 4820, article 25, Exhibit No. 14—"Fidelity National Bank, four hundred dollars; J. H. Schively"—you would have to proceed to charge J. H. Schively with four hundred dollars?

A. Yes, sir.

Q. But you would have no place in the books to credit the item to any one? You would have nothing in your books—nothing in this check or otherwise—to inform you why it was paid to the Fidelity National Bank?

A. Nothing whatsoever.

Q. Nothing whatsoever. That would be a question dependable on Mr. Schrock? Now then, was it possible under the system of book-keeping that obtained in this insurance company for the insurance company to give its note for a certain amount of money, afterwards taking up that note by check with the funds of the company, file the note away in the proper receptacle of the company as one of the company's canceled obligations, and still have the money with which the note was taken up charged on the books against some one of the individuals, and there be no check upon the transaction in that way?

A. Hardly possible. It would be possible for the time being, but at the end of the month, when we took our trial balance, we would find our accounts out of balance.

Q. But you would not be out of balance if you had charged the payments to some individual?

A. No, sir, I would not be out of balance.

Q. In case the canceled bill had never been exhibited to you, and simply filed away, nothing would be out of balance? You speak of the notes being taken up and the check issued, and the note given upon which there should be an entry made. There are two entries there. It is hardly possible that both would escape. What check would you have if by the payment—

A. We had a governing account with the bank.

Q. You had a governing account?

A. Oh, yes, and an individual account.

Q. Those were your bank accounts?

A. The cash disbursements would naturally govern the individual disbursements, the totals.

Q. That is very true. As a matter of fact, if Mr. Schrock and others with him made a note payable to Mr. Ward for four hundred dollars, and Mr. Schrock subsequently drew a check to pay the four-hundred-dollar note where it was on deposit and took up the note and filed it away in his note register, nothing having been reported to you in the first instance that the company had issued the notes, there would be no way for your books to balance without that money that had been used in taking up that note was charged off to some other account than "bills payable"?

BY MR. MANAGER EDGE: I do not think the witness understands.

A. I do not think I do. You mean if the note was given and no record made of it, and on the other hand a check was issued to take up the note, and a record made of that, do you mean by that there was no way—

Q. I mean you would be out of balance until you charged that money off to some other account?

A. Most certainly.

Q. Were you present when these figures you have testified to were gone over by Mr. Schively and Mr. Schrock?

A. Yes.

Q. Were you present all of the time?

A. Why, I was present at the office, but I cannot say I was with the gentlemen all of the time.

Q. Were you with the gentlemen while they were holding the discussion and making these marks on there?

A. I cannot say that I was with them.

Q. Was Mr. Shallenberger there?

A. Mr. Shallenberger, I believe, was in the office.

Q. Now, the cash to balance this account—the Schively account, October 8th—shows a total in the ledger of \$753. Will you kindly itemize—will you kindly give me the items that make that charge?

A. On October 3rd, check 5134, \$400; on the same date, check 5135, \$3.00; October 6th, check 5167, \$50.00; October 8th, check 5174, \$40.00; on the same date, check 5175, \$260.50; total, \$753.

Q. Now then, will you explain how it is you post these items in a lump sum on the 8th of October instead of posting them each on the day as they occurred?

A. That was to eliminate a great deal of unnecessary work. I would have the ledger full before I was really started, according to the volume of business we had.

Q. You were in the habit of posting the cash book only once a week?

A. Once a month into the ledger.

Q. Then you made the figures of a lump sum?

A. Yes, sir.

Q. Now, when did you post up the cash book—how often?

A. Every day or so.

Q. There were intervals of more than one day before you would post up the stubs?

A. At times, yes.

Q. At times?

A. Yes, if we were rushed with work, we would let go a day or two.

Q. And when you got time, you would take up the stub book, take your rubber stamp and stamp the date, and under that date you would carry into the cash book each item of the business of that day?

A. Yes, sir.

Q. And finally, probably once a month, you would post from the cash book into your ledger; then you would post a certain sum, the total of all the items chargeable and creditable to that person during the month, in that book? [*Indicating.*]

A. Yes, sir.

Q. That was your system?

A. Not altogether—

Q. There were times when you would post every day, and sometimes you would not post for several days?

A. We had one general column we posted there into the general ledger. That could be carried on daily. These are individual postings under the general ledger items.

Q. That is your handwriting? [*Indicating.*]

A. Yes.

Q. How long was it after Mr. Schively left that you made up this statement of account?

A. Well, I cannot say surely. I think it was just about the time that he left.

Q. On the day that he left?

A. Within a day or two. I know that he was there settling up the account at that time. I cannot say whether it was the same day or a few days later.

Q. Did you make it from the ledger?

A. Yes, sir.

Q. Where did this discussion regarding the settlement of this account take place?

A. In the office of the company.

BY MR. MANAGER EDGE: I may state that if you want to continue this cross-examination tomorrow, we have a witness here from the town of Boise, Idaho, who will probably have to leave on the 6:30 train, no matter whether we get to his testimony or not. He has taken up some land down there, and the day of the time for his final proof is set for Saturday, and in order for him to get his witnesses and get there it is necessary for him to start this evening. I thought that we might possibly get through with this witness by 4 o'clock or such a matter, and then we would have time to take up this other witness. He is one of the deputy prosecuting attorneys who was before the grand jury at the time this testimony was given. If some arrangement could be made for the taking of that testimony before the 6:30 train this

evening, why I would like very much to have it done, and if counsel will stipulate—

BY MR. ISRAEL: Who is this witness?

A. J. H. Pellitier.

BY MR. ISRAEL: I think I can probably expedite matters by being given a little time to do a little figuring here with my client, and I will consent to withdraw the witness till we get through with Mr. Pellitier.

BY MR. MANAGER EDGE: This will be a little out of order. He will testify merely to what took place before the grand jury.

Mr. John H. Pellitier, being first duly sworn, testified as follows:

*Direct Examination—*

BY THE PRESIDING OFFICER: Will the president of the Senate please take the chair.

BY THE PRESIDENT: Will the senator from Kitsap county, Senator Bryan, take the chair.

BY MR. MANAGER EDGE: Q. State your full name?

A. John H. Pellitier.

Q. Where do you live, Mr. Pellitier?

A. Kinghill, Idaho.

Q. Where were you on or about the 20th day of April of this year?

A. Spokane.

Q. Were you present at the grand jury at the time that they were investigating the affairs of the Pacific Live Stock Association?

A. I was.

Q. Were you present at the time Mr. J. H. Schively was called as a witness before that grand jury?

A. I was.

Q. State whether or not any oath was administered to him?

A. It was, the customary oath.

Q. State whether or not he made any objection to testify before the grand jury?

A. He did not.

Q. State what he said in that regard, if anything?

A. He said that he was perfectly willing to give all of the information that he had.

Q. When asked as to whether or not he had any agreement with Mr. Ward in reference to purchasing Mr. Ward's interest in the Pacific Live Stock Association, or his privileges or rights, whatever they were, what did Mr. Schively testify to under oath?

A. He stated that he had no arrangement whatever with Mr. Ward.

Q. When asked if he ever executed any notes to Mr. Ward in consideration of his resigning, what did he testify to?

A. He stated that he had not executed any notes to Mr. Ward.

Q. When asked in reference to his having paid these notes—or they having been paid or charged to his account—what did he testify to?

A. He stated that he had not paid them, and had not seen them.

Q. Had not seen what?

A. The notes.

Q. When asked in reference to the method by which his compensa-

tion was determined and paid as an officer of the company, what did he testify to?

A. He said that he was paid a flat salary of \$400 per month for the time he was with the company.

Q. When asked as to whether or not he received commissions, what did he testify to?

A. He did not receive any commissions. He was on a flat salary basis entirely.

Q. When asked as to the total amount of salary he had received while acting as president of that company, during those three months, what did he testify to?

A. \$400.00 each month for the time he was with them.

*Cross-Examination—*

BY MR. ISRAEL: Q. How long was Mr. Schively before the grand jury?

A. Two days—not the entire time, but on two days most of the time.

Q. How long was he there altogether—there in hours?

A. I would say about five or six hours altogether.

Q. Was he being examined regarding any other matters than those you have testified to, during that time?

A. Yes, sir.

Q. Have you stated all the questions that were asked him and all the answers he made in regard to the matters you have testified to?

A. No, sir; I have not.

Q. What you have testified to is what you gathered as the conclusion of his statements?

A. Yes, sir.

Q. You don't pretend to state the questions and answers?

A. No, sir.

Q. Who was examining him?

A. Mr. Donavan.

Q. Were any notes exhibited to him?

A. Of his own?

Q. Those notes that were under discussion.

A. No, sir; I don't think so.

Q. In what capacity were you there?

A. Deputy prosecuting attorney for Spokane county.

Q. What were you engaged in doing in the room?

A. Advising with Mr. Donavan part of the time.

Q. What were you doing in the way of any labor of any kind?

A. Occasionally taking notes.

Q. You were taking the entire report in shorthand, weren't you?

A. No, sir; not the entire report.

Q. You have gotten all this matter in shorthand?

A. No, sir.

Q. You did not take it in shorthand?

A. Not all of it.

Q. These thing of which you have testified?

A. Oh, yes; some of it I took in shorthand.

Q. Will you give us the benefit of the exact questions and the exact answers that John Schively made at that time?

A. I could not do it.

Q. Why not?

A. I have not the notes.

Q. Where are they?

A. In the custody of the court of Spokane county.

Q. Did Mr. Schively say in that examination that he had no recollection of signing any notes?

A. He stated that he had not signed any notes.

Q. Did he state that he had no recollection of signing any notes?

A. I think not.

Q. What was the question that was asked that caused him to make that answer?

A. In substance, if he had signed any notes, or given any notes to Mr. Ward in payment of his interest in the association.

Q. And he said that he had not?

A. He said that he had not.

Q. The question he was answering then was, Did you sign any notes in payment to Mr. Ward for his interest in the association?

A. That is as I recollect it.

Q. That is your recollection of it?

A. Yes, sir.

Q. It was not, Did you sign any notes in payment to Mr. Ward for his abdicating an office in the association and allowing you to be elected to it?

A. No, sir.

Q. That was not it at all?

A. No, sir.

Q. Not your recollection of it?

A. No, not my recollection of it.

Q. But it was directed to the question of his giving notes to buy an interest of Ward in the association?

A. To buy out Ward's interest.

Q. To buy out Ward's interest in the association?

A. Yes, sir.

Q. Was Mr. Ward before that same grand jury?

A. Yes, sir.

Q. Did Mr. Ward state before that grand jury that he was a stockholder in this association?

BY MR. MANAGER EDGE: I object to that, if the court please, as to what some one else testified to before the grand jury. I don't believe that is admissible. I don't believe it is material; and this witness is not permitted to testify—I don't believe he would be permitted—would probably be in contempt if he went on and related what every other witness testified to before the grand jury before which he was present, simply by reason of the fact that he was an officer of the same.

BY THE PRESIDING OFFICER: The chair fails to see the materiality of that particular question.

BY MR. ISRAEL: Maybe I can enlighten the chair.

BY THE PRESIDING OFFICER: I will hear you, Mr. Israel.

BY MR. ISRAEL: This man is charged with perjury. Perjury is the wilfully misstating or wilfully testifying to a fact that is untrue. A man who wilfully states a fact that he knows to be untrue commits perjury. The charging part of the indictment that is exhibited in



this article of impeachment as the basis of the article is a purported indictment by a grand jury of Spokane charging this man with perjury and setting forth that he perjured himself in testifying that he did not sign certain notes payable to Ward. Well, let's get the exact language. This indictment says that the truth and the fact is that "J. H. Schively entered into an agreement and contract with E. R. Ward, who was then and there president and trustee of said corporation, and that in consideration of the sum of \$1,200.00, paid by said J. H. Schively to said E. R. Ward, the said E. R. Ward should resign as president and trustee of said corporation in favor of said J. H. Schively, and said E. R. Ward should use his influence with the other trustees of said corporation to procure the election of said J. H. Schively as president and trustee of said corporation in the place and stead of said E. R. Ward, with the same rights and privileges to commissions and millage on insurance written and to be written by and for said corporation which had theretofore been enjoyed by said E. R. Ward." Now, you say that that is the truth and the fact. You say by adopting this indictment that he did testify before that grand jury that "prior to or at the time of his becoming an officer of said corporation, or at any time that said E. R. Ward, in consideration of the sum of \$1,200.00 or any sum whatsoever paid or agreed to be paid by said J. H. Schively to him, that he should resign as president and trustee of said corporation in favor of said J. H. Schively and that he, the said J. H. Schively, through the influence or procurement of said E. R. Ward, or through the influence of said E. R. Ward and other trustees of said corporation, or any of them, succeed said Ward as president and trustee of said corporation." Now that is the false testimony. The other is the truth. This witness is brought here to establish the false testimony. He says that he was asked the question, Did you execute any notes to Ward for the purchase of his interests in this company?—and three times the witness has said so, that that was the question as his recollection serves him; not to resign as president, not to use his influence to have Schively elected president, but to purchase the interest in the company. Now, this witness is presumed to be a true witness. If Mr. Ward has testified to that grand jury that he was a stockholder in this concern, then the witness could well say under any phase of this matter, without committing any perjury, that he had never given his note to Mr. Ward for the purchase of any interest in this company. Perjury is something you must hold down to the allegation and to the statement made. That is why it is competent, your honor, to know whether Ward has testified to having an interest in this company, beyond the mere fact of his being president.

BY THE PRESIDING OFFICER: The chair fails to see where the statement of E. R. Ward before the grand jury, that he was or was not a director, would be material. It may be material, or perhaps is material, to ascertain whether Ward was in fact a director, but what he represented to this grand jury is immaterial.

BY MR. ISRAEL: But I am directing myself to his ownership, interest in the company.

BY MR. MANAGER EDGE: Mr. Ward has been present here and has been submitted to cross-examination on that question.

BY THE PRESIDING OFFICER: That matter can be established whether he is a director or not at the time of these transactions with Mr. Schively—whether he was or was not a director; but to prove by this witness what Mr. Ward testified to, unless Mr. Ward had been brought here and said he did not testify to it, the chair believes is immaterial.

BY MR. ISRAEL: Very well.

Q. The fact is, Mr. Pellitier, nevertheless, that the question was, Did you ever give Ward any notes in purchase of his interest in this company?

A. That is as I recollect it.

Q. That is as you recollect it. Your recollection serves you that he testified before the grand jury at that time that taking \$400 per month for the time he was with the company, and charging him with everything that he was chargeable legitimately with, that the balance due him on the 8th day of October, when he left the company, was the sum of \$260.50?

A. He tried to do some figuring of that kind, but whether he did it or not I would not be certain.

Q. Who stopped him?

A. Nobody stopped him. Whether that is the exact amount of the balance he tried to figure out, I could not remember.

Q. But he did state that he had settled with the company?

A. Yes, sir.

Q. On a flat rate of salary of \$400 a month when he left the company, and not on a millage basis or percentage basis?

A. Yes, sir; that he was on a flat salary basis.

Q. And he so settled with his company when he left it; you remember that, don't you?

A. I don't remember that he said he so settled with the company when he left it, but he said that was the basis he was working on, and that he had made a settlement with the company.

Q. Didn't you tell us a while ago that there was a check of some kind exhibited there, and he made some figures in which he claimed there was a certain balance due him when he quit?

A. Yes, sir.

Q. On a flat salary of \$400 a month?

A. He did not say that the settlement was figured on a flat salary of \$400, but he said they had made a settlement with him which was satisfactory.

Q. And that he had been on a rate of \$400 a month.

A. Yes, sir.

Q. And that he had not been on a millage basis?

A. That's right.

Q. You did not examine Mr. Schively at that time yourself at all?

A. No, I don't believe I did myself.

Q. Mr. Donavan did the examining.

A. I think Mr. Donavan examined him personally. At least, that is my recollection of that, Mr. Israel. I would not be absolutely certain.

BY MR. ISRAEL: Very well. That is all.

[Witness excused.]

BY MR. MANAGER EDGE: I would like to have Mr. Pellitier excused.

BY THE PRESIDING OFFICER: Is there any objection to excusing Mr. Pellitier on the part of the defendant?

BY MR. ISRAEL: No.

BY THE PRESIDING OFFICER: The witness will be excused.

BY MR. MANAGER EDGE: Call Mr. Hunter, to complete his cross-examination. We simply sandwiched Mr. Pellitier in between.

R. J. Hunter, recalled for further cross-examination, testified as follows:

BY MR. ISRAEL: Q. Now, were you working for the company as a bookkeeper on July 10, 1906?

A. Yes, sir.

Q. Mr. Schively got \$200 on that day, from your account book? Look and see.

A. [*Witness looks at book.*] Yes, sir.

Q. What for?

A. I have got a notation in my cash book here, "Insurance department fees."

Q. When did you put that notation there?

A. From the check stubs.

Q. Get check stub 4245. [*Witness does so.*] What is the notation on the stub?

A. The notation is—I will read the whole thing: "July 10, 1906. J. H. Schively, \$200.00." It was put down here, "Account salary" and later changed to "Insurance department fees."

Q. It was later changed to "Insurance department fees"?

A. On the date that I charged it in the cash book, on July 10th.

Q. About how long after the 10th was it you charged it in the cash book?

A. I charged it on that day, I presume. I can't say. It might have been a day later.

Q. Now, that transaction was after Schively had been elected president?

A. I can't say as to that.

Q. Well, the stub book shows it was on the 10th of July, doesn't it?

A. Yes, sir.

Q. And the stub book shows it was account of salary?

A. Yes, sir.

Q. What is the "J. H. Schively" in there in pencil?

A. From this notation here.

Q. Why is it made in pencil and the words "Insurance department fees" in ink?

A. I cannot say.

Q. Would it strike you that the stub, that the writing in the stub, "J. H. Schively, \$200.00, salary," was written with one pen at one time, while the words "Insurance department fees" is written another time?

A. Yes, sir; it does.

Q. At different times. Now, is it also true that "J. H. Schively, \$200.00, account salary," is in Ward's handwriting?

A. That is in Mr. Ward's handwriting.

Q. Now, whose handwriting is "Insurance department fees"?

A. In my handwriting.

Q. Now then, you changed that writing from "salary" to "Insurance department fees" at the instruction of Mr. Ward?

A. Yes, sir.

Q. You know there had been no examination of the company's affairs during that month of July by the insurance commissioner; your books had not been checked up?

A. I cannot say they were or they were not.

Q. Now then, this check, January 30, 1906, \$150.00, is by Ward and Schrock to Schively. [*Hands paper to witness.*] I understood you to say that you presumed that was for fees?

A. I calculated it to be.

Q. All right, sir.

Q. Is that your handwriting?

A. Yes.

Q. This item was charged off of the stub book?

A. Yes, sir.

Q. Now, do I understand you that some of these items were for insurance taxes?

A. Why, I might have said they possibly could be. I can't tell exactly what they are for without seeing the checks.

Q. Did your company pay any insurance taxes?

A. Yes, we have paid taxes.

Q. To whom?

A. I think they were paid to Nichols, as a rule.

Q. Nichols, the insurance commissioner?

A. I wouldn't say for sure; I didn't always make out the checks for these things.

Q. Have you any personal recollection of paying any insurance taxes to Nichols or anybody else?

A. Yes, I know.

Q. You are sure—you are quite positive of that?

A. Yes.

Q. The company was a mutual company, wasn't it?

A. Yes.

Q. Mutual companies don't pay any taxes in this state at all, do they?

A. I can't say.

Q. Well, you say you paid taxes?

A. I said I thought they did.

Q. You said you were positive that you paid some of the taxes yourself.

A. I think you misunderstood me.

By MR. ISRAEL: Well, let the record speak for itself. I would like to have this witness remain. I may want to recall him on these books.

By THE PRESIDING OFFICER: The witness will remain.

By MR. MANAGER EDGE: Now, if the court please, the next link in the evidence that I intended offering even before Mr. Pellitier was called, is the record of the superior court of Spokane county, empanneling a grand jury and appointing its foreman. If counsel will admit on the part of the respondent that that grand jury was legally in session, it will obviate the necessity of us introducing and having read

the record which contains the order of the court directing that the grand jury be called; the certificate of the clerk who drew the names from the box, the return of the sheriff showing that the men were called before the court, the record of the court journal showing the oath was administered, and the order of the court appointing the foreman. That is formal proof. We have here a certified record of the superior court records of Spokane county.

BY MR. ISRAEL: You do not need to read it; I will admit it to save the record and save time.

BY MR. MANAGER EDGE: We will put this in the record, then, and have the record show that counsel admits on part of the respondent the empanneling and lawful existence of the grand jury of Spokane county.

BY MR. ISRAEL: Now you may either put that record in in a long and tedious and hard way, or take my admission as I state it, that for the purposes of this case and no other purpose and not to bind us in any other way, I admit the grand jury was legally drawn in Spokane at the time this jury was drawn.

BY MR. MANAGER EDGE: If you admit that it was drawn and object to the record, it seems to me that you are inconsistent.

BY MR. ISRAEL: I do not propose to make any admission that might bind me anywhere else. You could compel me to let that record in over my objection, but you offered me the advantage of admitting all these things, and by not putting your record in at all, no advantage can be taken of you after you make that agreement.

BY MR. MANAGER EDGE: Well, I will stipulate that this be admitted simply for the purposes of this case.

BY THE PRESIDING OFFICER: The record will be admitted under the stipulation, no objection being made.

*The record so admitted reads as follows:*

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN  
AND FOR THE COUNTY OF SPOKANE.

*In the Matter of the Grand Jury for Spokane County, Washington, for the Year of 1909.—INDEX.*

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## SUPERIOR COURT JOURNAL.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE  
COUNTY OF SPOKANE—DEPARTMENT NO. 1.

*In the Matter of Drawing Grand Jurors for the Month of March, 1909.*

Now on this 13th day of February, 1909, the matter of drawing grand jurors for the month of March, 1909, being before the court, it is by the court,

*Ordered*, That the jury commissioners of the said county, and the clerk of the said court, be and appear in open court on the 13th day of February, 1909, at the hour of 8:30 o'clock a. m., for the purpose of drawing thirty (30) names from the jury box of the said county, to act as grand jurors, and that the same be summoned to appear in said court at 9:30 o'clock in the forenoon on the 8th day of March, 1909.

J. D. HINKLE, *Judge*.

Filed Feb. 13, 1909, at 8:30 a. m.

C. E. ATKINSON, *Clerk*;

CHAS. MALLERY, *Deputy*.

Recorded in Journal 123, page 18, Records of Spokane County, Washington.

IN THE SUPERIOR COURT OF SPOKANE COUNTY, STATE OF  
WASHINGTON.

*State of Washington, County of Spokane, ss:*

I, C. E. Atkinson, clerk of the superior court of the State of Washington, for the county of Spokane, do hereby certify:

That in compliance with the order of court, made on the 13th day of February, 1909, the jury commissioners of the said county and the clerk of the said court assembled in open court, and in the presence of such persons as desired to be present the said clerk was blindfolded and the box containing the names of persons eligible for jury service was well shaken, so that said names therein contained were well mixed, and that then the said clerk, so blindfolded as aforesaid, drew from the said box thirty (30) names, as ordered by the court, and said names were then certified to the sheriff of said county for service.

In witness whereof, I have hereunto set my hand this 13th day of February, 1909.

C. E. ATKINSON, *Clerk*.

Original entry Journal 123, page 18, Records of Spokane County, Washington.

UNITED STATES OF AMERICA.—IN THE SUPERIOR COURT FOR  
SPOKANE COUNTY.

*The State of Washington, County of Spokane, ss:*

TO THE SHERIFF OF SAID COUNTY, GREETING: In the name of the State of Washington, you are hereby commanded to summon 30 good and lawful persons from the body of Spokane county, to-wit:

1	H. C. Ball.....	Cheney	16	J. V. Hubbard.....	Hillyard RD2
2	F. J. Behman.....	City	17	E. H. Hughes.....	City
3	E. A. Boswell.....	Fairfield	18	Garrett B. Hunt.....	City
4	J. H. Brighton.....	City	19	R. T. Kaufman.....	City
5	E. D. Browne.....	City	20	Wm. Kelly, Jr.....	City
6	W. B. Crowley.....	City	21	E. M. Levis.....	City
7	Ben F. Davis.....	City	22	Chas. R. Lewis.....	City
8	Chas. Ehrenberg.....	City	23	P. E. Maslon.....	Spangle
9	B. G. Fuller.....	City	24	F. N. Muzzy.....	Moab
10	J. R. Gauldin.....	Marshall	25	R. McKinley.....	City
11	J. M. Gomness.....	City	26	P. Saffron.....	City
12	Jas. B. Gray.....	City	27	I. B. Schoen.....	City
13	Andrew Hackett.....	City	28	Geo. Watson.....	Espanola
14	J. R. Herron.....	City	29	S. R. Wilson.....	Spokane RD7
15	W. F. Hertzberg.....	E. Spokane	30	T. C. Wolf.....	City

—To be and appear before the superior court for Spokane county, held

at Spokane, Spokane county, in said state, at the court house in Spokane, the county seat of said county, on the 8th day of March, A. D. one thousand nine hundred nine, at 9:30 o'clock in the forenoon of said day, to serve as grand jurors on the part of the county of Spokane, State of Washington, until they shall be thence discharged, and have you then and there this writ with your return indorsed thereon.

Witness, the Hon. J. D. Hinkle, judge of said court, and the seal thereof affixed this 13th day of February, A. D. 1909.

[Seal]

C. E. ATKINSON, *Clerk*;

M. M. RICHARDSON, *Deputy*.

Original entry Journal 123, page 18, Records Superior Court, Spokane County, Washington.

*State of Washington, County of Spokane, ss:*

I, F. K. Pugh, sheriff of Spokane county, Washington, do hereby certify that I received the within venire on the 13th day of February, 1909, and that I have executed the same, by having summoned the following named persons to be and appear before the superior court, at the court house in Spokane, Spokane county, Washington, on the 8th day of March, 1909, at 9:30 o'clock in the forenoon, to serve as grand jurors for said county and state: H. C. Ball, J. F. Behman, E. A. Boswell, J. H. Brighton, E. D. Browne, W. B. Crowley, Ben. F. Davis, Chas. Ehrenberg, B. G. Fuller, J. R. Gauldin, J. N. Gomness, Jas. B. Gray, Andrew Hackett, J. R. Herron, W. F. Hertzberg, E. H. Hughes, Garrett B. Hunt, Wm. Kelly, Jr., E. M. Lewis, Chas. R. Lewis, P. E. Marion, F. N. Muzzy, P. Saffron, I. B. Schoen, Geo. Watson; and have been unable to find the following named persons in Spokane county: J. V. Hubbard, R. T. Kaufman, R. McKinley, S. R. Wilson, T. C. Wolf.

This 6th day of March, 1909.

F. K. PUGH, *Sheriff*;

By C. E. LONG, *Deputy*.

Filed Mar. 6, 1909, at 1 p. m.

C. E. ATKINSON, *Clerk*;

M. M. RICHARDSON, *Deputy*.

Recorded Jury Journal 123, page 18, Records of Spokane County, Washington.

## SUPERIOR COURT JOURNAL.

MONDAY, the 8th day of March, 1909.

Court convened at 9:30 a. m.

Present, Honorable Wm. A. Huneke, judge presiding.

Of the 25 persons on whom service was had, all reported in person at this court, with the exception of J. R. Gauldin, who reported by telephone as being unable to attend on account of sickness, and the court thereupon excused him until 9:30 a. m., March 10th, 1909. The court interrogated those summoned as to their qualifications to act as grand jurors, and all having answered in a satisfactory manner, they were all found qualified. The court then heard the statements of those desiring to be excused from serving, whereupon the court for good and sufficient reasons there and then shown excused the following named parties from serving on this grand jury:

(1) F. J. Behman, (2) Garrett B. Hunt, (3) Chas. Ehrenberg, (4) J. N. Gomness, (5) E. A. Boswell, (6) W. B. Crowley, (7) Jas. B. Gray, (8) P. Saffron, (9) B. G. Fuller,

—and this only leaving 15 names available, it was deemed inadvisable to proceed, and an additional twenty names were ordered drawn, summoned and to report at the court house, in Spokane, at 9:30 a. m., March 10th, 1909.

The court excused those present until 9:30 a. m., March 10th, 1909.  
Court adjourned until 9:30 a. m., March 9th, 1909.

WM. A. HUNEKE, *Judge*.

Minutes on return of grand jury, Court Journal 115, pages 466, 467, 468, Records Superior Court, Spokane County, Washington.

# IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN AND FOR THE COUNTY OF SPOKANE.

*In the Matter of Drawing Grand Jurors for the Month of March, 1909.*

Now, on this 8th day of March, 1909, the matter of drawing grand jurors for the month of March, 1909, being before the court, it is by the court,

*Ordered*, That the jury commissioners of the said county, and the clerk of the said court, be and appear in open court, on the 8th day of March, 1909, at the hour of 1 o'clock p. m., for the purpose of drawing twenty (20) names from the jury box of the said county, and that the same be summoned to appear in said court at ..... o'clock in the forenoon on the 10th day of March, 1909.

J. D. HINKLE, *Judge*.

Filed March 8, 1909.

C. E. ATKINSON, *Clerk*;

OTTO BLENNER, *Deputy*.

Recorded Jury Journal 123, page 19, Records of Spokane County, Washington.

# IN THE SUPERIOR COURT OF SPOKANE COUNTY, STATE OF WASHINGTON.

*State of Washington, County of Spokane, ss:*

I, C. E. Atkinson, clerk of the superior court of the State of Washington, for the county of Spokane, do hereby certify:

That in compliance with the order of court, made on the 8th day of March, 1909, the jury commissioners of the said county, and the clerk of the said court, assembled in open court, and in the presence of such persons as desired to be present, the said clerk was blindfolded and the box containing the names of persons eligible for jury service was well shaken, so that said names therein contained were well mixed, and that then the said clerk, so blindfolded as aforesaid, drew from the said box, twenty (20) names as ordered by the court, and said names were then certified to the sheriff of said county for service.

In witness whereof, I have hereunto set my hand this 8th day of March, 1909.

C. E. ATKINSON, *Clerk*.

Original entry Journal 123, page 19, Records of Superior Court, Spokane County, Washington.

# UNITED STATES OF AMERICA—IN THE SUPERIOR COURT FOR SPOKANE COUNTY.

*The State of Washington, County of Spokane, ss:*

TO THE SHERIFF OF SAID COUNTY, GREETING: In the name of the State of Washington, you are hereby commanded to summon 20 good and lawful persons from the body of Spokane county, to-wit:

1 Joseph T. Baugher.....City	11 A. B. Humason.....City
2 R. E. Bigelow.....City	12 Jay Lawyer.....City
3 S. D. Coats.....City	13 P. M. Little.....City
4 J. T. Crewdson.....Medical Lake	14 H. J. Martin.....City
5 D. M. Drumbheller.....City	15 G. W. Oakes.....Medical Lake
6 L. H. Elliott..Spokane RFD No. 3	16 Fred Shirley.....City
7 Ben Ford.....Plaza	17 J. J. Thies.....Hillyard
8 J. J. Garretts.....Sprague	18 Jacob Tritt.....Cheney RFD 3
9 A. L. Graves.....City	19 W. R. Winstead.....City
10 B. D. Harris.....Tyler	20 Geo. Y. Young.....Deer Park

—to be and appear before the superior court for Spokane county, held



at Spokane, Spokane county, in said state, at the court house in Spokane, the county seat of said county, on the 10th day of March, A. D. one thousand nine hundred and nine, at 9:30 o'clock in the forenoon of said day, to serve as grand jurors on the part of the county of Spokane, until they shall thence be discharged, and have you then and there this writ with your return indorsed thereon.

Witness, the Hon. J. D. Hinkle, judge of said court, and the seal thereof affixed this 8th day of March, A. D. 1909.

C. E. ATKINSON, *Clerk*;

C. D. WOODFILL, *Deputy*.

[Seal Superior Court.]

Recorded Jury Journal 123, page 19, Records Superior Court, Spokane County, Washington.

*State of Washington, County of Spokane, ss:*

I, F. K. Pugh, sheriff of county and state aforesaid, do hereby certify that I received the within venire on the 8th day of March, 1909, and that I have executed the same by having summoned the following named persons to be and appear before the superior court at the court house in Spokane, Spokane county, Wash., on the 10th day of March, 1909, at the hour of 9:30 o'clock in the forenoon of said day, to serve as grand jurors for said county and state: Joseph T. Baugher, R. E. Bigelow, J. T. Crewdson, D. M. Drumheller; A. L. Graves, B. D. Harris, Jay Lawyer, H. J. Martin, Fred Shirley, J. J. Thies, Jacob Tritt, Geo. Y. Young; and have been unable to find the following named persons in Spokane county: S. D. Coats, J. H. Elliott, Ben Ford, J. J. Garretts, A. B. Humason, P. M. Little, G. W. Oakes, W. R. Winstead.

Return this 10th day of March, 1909.

F. K. PUGH, *Sheriff*;

By C. E. LONG, *Deputy*.

Filed Mar. 10, 1909, at 9:40 o'clock a. m.

C. E. ATKINSON, *Clerk*;

M. M. RICHARDSON, *Deputy*.

Recorded Jury Journal 123, page 19, Records Superior Court, Spokane County, Washington.

## SUPERIOR COURT JOURNAL,

WEDNESDAY, THE 10TH DAY OF MARCH, 1909.

Court convened at 9.30 a. m.

Present, Honorable Wm. A. Huneke, judge presiding.

[*Venire and sheriff's return shown.*]

Of the twelve above-named persons upon whom service was had all reported in person, and the court interrogated them as to their qualifications to act as grand jurors. All were found qualified except B. E. Harris, and Geo. Y. Young, who said they could not read and write the English language, and for this reason they were excused. Jacob Tritt was excused on account of ill health and Dan'l Drumheller was excused at his own request on account of age, L. Lawyer and H. J. Martin were excused at their own request for good sufficient reasons presented to the court, and A. L. Graves, J. R. Herron, E. M. Levis, J. H. Brighton, E. D. Brown, and B. D. Harris were excused by the court, to which P. C. Sullivan, attorney for M. J. Gordon, excepted. The name of P. E. Masion was ordered corrected to read P. E. Marion. Counsel for M. J. Gordon waived the right accorded to examine the jurors touching upon their qualifications to act as grand jurors, and also to challenge any of them for cause, whereupon the following sixteen good and lawful men were found qualified and declared to be the grand jury on the part of the county of Spokane, State of Washington, to serve as such until they are discharged: H. C. Ball, Ben F. Davis, J. R. Gauldin, Andrew

Hackett, Chas. R. Lewis, P. E. Marion, F. B. Muzzy, I. B. Schoen, Geo. Watson, Wm. Kelley, Jr., J. T. Baugher, J. T. Crewdson, Fred Shirley, R. E. Bigelow, J. J. Theis, W. F. Hertzberg—and those present being all except J. R. Gauldin, who will report later, were sworn in as such grand jurors by taking the following oath, to-wit:

"You, as grand jurors for the body of the county of Spokane, do solemnly swear that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the state, your own counsel and that of your fellows, you will keep secret; you shall present no person through envy, hatred or malice; neither will you leave any person unrepresented through fear, favor, affection or reward, or hope thereof, but that you will present things truly as they come to your knowledge, according to the best of your understanding and according to the laws of this state. So help you God."

The court thereupon charged the grand jury as to the nature of their duties and appointed George P. Walker as bailiff to attend them, and the sheriff detailed Deputy Sheriffs C. E. Long and J. T. Logan to be in attendance.

Court adjourned until 9:30 a. m. March 11th, 1909.

WM. A. HUNEKE.

#### SUPERIOR COURT JOURNAL.

THURSDAY, THE 11TH DAY OF MARCH, 1909.

Court convened at 9:30 a. m.

Present, Honorable Wm. A. Huneke, judge presiding.

*In the Matter of the Grand Jury for Spokane County.*

J. R. Gauldin, the member of the grand jury not previously sworn, appeared in open court, qualified and took the oath required as a grand juror, as heretofore set forth fully on page 472 of this journal. The court then charged him as to the nature of his duties and obligations as such grand juror. M. J. Gordon, through his attorney, Frank Graves, entered an objection to this last juror taking any part in the deliberations of this grand jury in so far as they affect the rights of said M. J. Gordon.

Overruled.

It having come to the knowledge of the court that the stenographer for the prosecuting attorney had been present at yesterday's session of the grand jury and reported the proceedings thereof and afterwards transcribed the same, Harry Clark, the said stenographer, came into court, was sworn as to the disposition of said notes and transcription thereof and turned them all over to the court, and all copies of the same, and the court in person thereupon destroyed all said records and ordered that no one but the prosecuting attorney and one witness be permitted to be present at the sessions of the grand jury.

Later in the day Fred C. Pugh came into court and announced that he had appointed John H. Pellitier, a regularly qualified and practicing attorney, his deputy to assist him in his work before the grand jury; whereupon F. T. Post, Frank Graves and P. C. Sullivan, attorneys for M. J. Gordon, made formal protest against any notes being made of the proceedings of the grand jury except by the regular clerk thereof.

The court having heard the argument of counsel, took the matter under advisement until 9:30 a. m. March 12th, 1909.

Court adjourned until 9:30 a. m., March 12th, 1909.

WM. A. HUNEKE.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON, IN  
AND FOR THE COUNTY OF SPOKANE.

IN THE MATTER OF THE GRAND JURY FOR SPOKANE COUNTY, WASHINGTON,  
FOR THE YEAR OF 1909.

*State of Washington, County of Spokane, ss.*

I, C. E. Atkinson, clerk of the superior court of the State of Washington for the county of Spokane, do hereby certify that the above and foregoing are full, true and correct copies of the following, to-wit:

Order for drawing of grand jurors, dated Feb. 13th, 1909;

Certificate of clerk as to said drawing, dated Feb. 13th, 1909;

Venire issued and served on sheriff on Feb. 13th, 1909;

Sheriff's return on said venire;

Journal entry showing grand jurors reporting, March 8th, 1909;

Order for drawing of additional grand jurors, dated March 8th, 1909;

Certificate of clerk as to drawing, dated March 8th, 1909;

Venire issued and served on sheriff on March 8th, 1909;

Sheriff's return on said venire;

Journal entry showing grand jurors reporting, March 10th, 1909; and also showing those excused, the oath administered, and appointment of bailiff and deputy sheriffs detailed to be in attendance upon grand jury; —as the same now appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, this 23rd day of July, 1909.

C. E. ATKINSON, *Clerk*;

[SEAL]

M. M. RICHARDSON, *Deputy*.

WEDNESDAY, THE 4TH DAY OF AUGUST, 1909.

A court convened at 4:15 p. m.

Present, Hon. Wm. A. Huneke, judge presiding.

*In the Matter of the Grand Jury in and for Spokane County.*

The court's attention having been called to the fact that, through a mistake and inadvertence, the Court Journal for Wednesday, the 10th day of March, 1909, page 472, fails to disclose the fact of the appointment of Ben F. Davis as the foreman of the grand jury, which jury was sworn and charged on said day, which appointment of said Ben F. Davis as foreman of said grand jury was made in open court by Hon. Wm. A. Huneke, judge of the superior court, on the 10th day of March, 1909, it is therefore ordered, so as to correct and complete the journal of said court, on the 10th day of March, 1909, that this entry be considered as of that date, on which date said appointment was made and on which date said appointment should have been recorded in the journal of this court.

Done in open court this 4th day of August, 1909.

WM. A. HUNEKE, *Judge*.

*State of Washington, County of Spokane, ss.*

CERTIFICATE.

I, C. E. Atkinson, clerk of the superior court of the State of Washington, for the county of Spokane, do hereby certify that the above and foregoing is a true and correct copy of the entry appearing on page 4 of Superior Court Journal No. 124, dated August 4, 1909, as the same now appears on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court this 5th day of August, 1909.

C. E. ATKINSON, *Clerk*;

[SEAL]

By C. D. WOODFILL, *Deputy*.

Ben F. Davis, being a witness called on behalf of the complainants, after having first been duly sworn, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. State your full name?

A. Ben F. Davis.

Q. Where do you live, Mr. Davis?

A. Spokane.

Q. How long have you lived there?

A. Fourteen years.

Q. State whether or not you are a member of the grand jury that was empaneled in Spokane county on March 10th?

A. I am.

Q. That grand jury still in existence?

A. Yes, sir.

Q. State whether or not, and what position you held in that grand jury?

A. I was appointed foreman by the court.

Q. Was this grand jury in session on or about the 20th day of April of this year?

A. It was.

Q. I will ask you whether or not that grand jury undertook to investigate the affairs of the Pacific Live Stock Association?

A. It did.

Q. What was the purpose of that investigation?

A. To inquire if there had been any offense committed against the state in the embezzling of the funds of the Pacific Live Stock Association.

Q. In pursuance of that investigation, did you call Mr. Schively before the grand jury?

A. I did.

Q. Was any oath administered to him?

A. It was, and by me.

Q. You administered the oath as foreman of the grand jury?

A. I administered all oaths to each witness.

Q. Did Mr. Schively object to testifying before the grand jury?

A. He did not.

Q. During the course of his testimony before the grand jury was Mr. Schively questioned as to a transaction he had with E. R. Ward, by virtue of which Schively became president and trustee of the Pacific Live Stock Association?

A. He did.

Q. Was he questioned as to that?

A. He was.

Q. State in substance what his testimony was in reference to the agreement between himself and Ward by which Ward turned over to him his privileges and interests, or whatever he had to turn over.

A. He testified—

BY MR. ISRAEL: Now, if it please the court, I interpose an objection at this time. Of course we are proceeding very informally here, but in testing a question of perjury, the witness should, without any deviation at any time, first state the question that was asked and the answer that was made. This witness, who is going to testify as to what the witness

testified to, it is for him to say what the testimony was that was asked and what the answer was that was made.

BY THE PRESIDING OFFICER: The defendant desires you to ask what questions were asked Mr. Schively and what his answers were.

BY MR. LEE: Now, Mr. President, the law on that is entirely different, and counsel for respondent knows it. Greenleaf, in his work on Evidence, has this to say: "It is not necessary under an indictment for perjury that the proof should be in the same words, or that the witness take any note of his testimony, it being to prove substantially what he said and all he said upon the point in question." This witness wouldn't remember everything *verbatim*—the questions propounded and the answers given. All that he has to give is the substance of the questions and the answers; that is the rule, and counsel knows that it is well established by the courts that if he states in substance what the testimony was, that is sufficient.

BY MR. ISRAEL: Of course that is the rule; I have known that since I was a boy myself. I don't expect this witness to repeat anything but the substance of the question, and the substance of the answer, but I want the witness to state the substance of the question and of the answer, in relation to these matters, and not have counsel to suggest if anything was said or answered; that is what I am objecting to—the form of counsel's question.

BY THE PRESIDING OFFICER: I think your question should be modified so that the witness in the chair will testify as to what question was propounded to Mr. Schively and what answer was given, as near as he can remember.

BY MR. EDGE: Mr. Davis, just testify in your own words what was asked Mr. Schively and what he answered in reference to the agreement between himself and Ward, as near as you can.

A. In answering that, Mr. Edge, will it be necessary to go back to the foundation of this—now, to jump right into this as to the question or go back and say why we came up to this point?

Q. No, I asked you to repeat as near as you can the questions and answers touching upon this agreement between Ward and Schively—just that phase of it now—I will get to the other part of it later.

A. We asked Mr. Schively if he paid Mr. Ward—bought Mr. Ward's interest in the Live Stock Association for \$1,200—and he said he did not. Was that the question you wanted answered?

Q. What was said by him with reference to any agreement he had with Ward?

A. He said he had no agreement whatever with Mr. Ward; that he was working on a flat basis of \$400 per month; that the Pacific Live Stock had no agreement whatever with Mr. Ward.

Q. No agreement by virtue of which Ward went out?

A. None whatever.

Q. Was that the agreement that you were questioning him about?

A. Yes.

Q. What was asked and what were the answers with reference to any notes executed by him to Mr. Ward?

A. We asked him if he had gave Mr. Ward three notes of \$400 each, and he said that he did not and knew nothing about them whatever.

Q. What were the questions and answers, as near as you can recollect, as to the basis that he was paid on, millage or salary?

A. He denied emphatically that he was paid on a millage basis, and said that he was paid a flat salary of \$400 per month.

Q. Now, you heard this forenoon, Mr. Davis, of the existence of these three notes. State what efforts the grand jury made, or yourself or any one, to find out where these three notes were?

A. We made every effort we knew of possibly to obtain those notes. We asked Mr. Schively for those notes; we asked him where they were. We asked Mr. Ward and Mr. Schrock, also, and Mr. Lloyd E. Ganby, who was receiver at that time of the company, and also Billy Donovan, who was assistant prosecutor and who had charge of the case, and it was impossible to secure those notes anywhere.

Q. Did Ganby at that time have possession of all the papers and books of the company?

A. He claimed he had.

Q. He at that time was receiver of the company?

A. He was.

Q. And where did you get the books and papers that you did get before you?

A. From Mr. Ganby.

Q. And you say you endeavored to procure the notes from him or find out from him where they were?

A. Yes.

Q. Did Mr. Schrock ever ask permission to look over the books to find these notes? Was there anything said about that?

A. I believe at one time he said he could find them. We said, "Here are the books"; but he didn't find them.

Q. Did you have everything connected with the company there before you?

A. I don't know whether we did or not; we had a number of books there.

Q. Did you ask Mr. Schively anything about these three checks that were drawn in favor of the Fidelity Bank?

A. Yes, sir; he didn't seem to know anything about them.

Q. Why were the grand jury concerned about the disposition of the \$1,200?

A. We were investigating the Pacific Live Stock, and there had been charges made against them through the prosecuting attorney's office as to the officers, and Mr. Schively being one of them, we called him to examine him in regard to these \$1,200 checks, and other incidents.

*Cross-Examination—*

BY MR. ISRAEL: Q. It was generally known from the receivership of Murray that there was some mysterious transaction in this insurance company's affairs regarding \$1,200, wasn't there—that there was a \$1,200 item in the insurance company in the hands of the receiver that didn't seem to be straight; that was the circumstances when you went to investigate?

A. It was.

Q. And you called Mr. Schively before you as one of the officers and endeavored to get at the bottom of it?

A. Yes, sir.

Q. And he freely and voluntarily answered any question you asked him?

A. He did.

Q. Didn't claim any privileges—didn't quibble with you in the least?

A. No, sir.

Q. Told you everything he knew about the matter?

A. Apparently so.

Q. Was frank in giving his answers to you; he didn't hesitate in testifying at all, Mr. Davis, did he?

A. Well, there were some of his answers that weren't clear to us.

Q. That weren't clear to you. Now, he persisted before you that he had never got this \$1,200, didn't he?

A. He did.

Q. You showed him these three checks for \$400 each, signed by Schrock and payable to the Fidelity Company, one of them signed by himself as president of the company?

A. Yes, sir.

Q. And he still insisted that he never got that money?

A. He did.

Q. And you were never able to find the notes?

A. No, sir, never was.

Q. The receiver couldn't find them?

A. No, sir.

Q. And Mr. Schrock couldn't find them?

A. He couldn't find them.

Q. Schrock told you that he had turned them over to the receiver?

A. Yes.

Q. He claimed he turned them over to the receiver?

A. I believe he did; I am not positive.

Q. And Schiveiy, you had him in there about two hours, didn't you?

A. I think more than that.

Q. Longer than that?

A. I think so.

Q. And during that entire examination you were going over his affairs in connection with this company?

A. Yes, sir.

Q. And you called him in and tried to get some admission out of him as to this \$1,200.

A. We did.

Q. And he persisted that he never saw these checks?

A. One of them, he admitted that, after we showed his signature.

Q. And he said that was his signature as president of the company?

A. Yes.

Q. But he still persisted that check never came to him for any purpose?

A. He claimed he never received the money.

Q. Now, he also as persistently claimed that he worked on a flat rate of \$400 a month for that company, and settled at \$400 a month, didn't he?

A. He didn't say he settled at \$400 a month.

Q. He wasn't on a millage or commission basis, but a flat salary, he said?

A. On a flat salary, yes.

Q. He said he never did make any deal to buy Mr. Ward's interest at all?

A. Yes.

At 5:00 p. m. an adjournment was taken until Thursday, August 19, 1909, at 9:30 a. m.

SENATE CHAMBER,

OLYMPIA, WASH., August 19, 1909.

The Senate, sitting as a court of impeachment, convened at 9:30 a. m.

BY THE PRESIDENT: Senator Booth will take the chair.

BY THE PRESIDING OFFICER: The Senate will now come to order as a court of impeachment, and counsel will proceed.

[*Benjamin F. Davis on the stand.*]

*Cross-Examination Continued—*

BY MR. ISRAEL: Q. Now, Mr. Davis, look at this paper which is marked "Article 25," numbered 16, and state if that paper was before the grand jury at the time of examining Mr. Schively? [*Handing witness paper.*]

A. [*Examining paper.*] Yes, I believe it was.

Q. Was that the principal paper that the grand jury had before it at the time it was examining Mr. Schively as to his having been on a commission basis—on a millage basis—or having been a party to these notes we speak of in purchasing Mr. Ward's interest?

A. We had the books also.

Q. You had the books and you used this also? [*Indicating.*]

A. Yes, sir.

Q. Who had furnished this to you.

A. Mr. Ganby, the receiver for the Pacific Live Stock Association.

Q. And in the face of this, Mr. Schively throughout the several hours of his examination persisted that he had been on a salary basis?

A. Yes, sir.

Q. And persisted that he had never purchased the Ward interest?

A. Yes, sir.

Q. And persisted in his statement that he had never participated in millage?

A. Yes, sir.

Q. And persisted in his statement that he had never received any money that you claim was credited to his account—charged to his account in paying Ward?

A. Yes, sir.

Q. And you were unable to shake him in any one of these three propositions? He persisted in all three of them?

A. Yes, sir.

Q. And it was the belief of the grand jury that he was on a millage basis—

BY MR. MANAGER EDGE: I object to that.

BY MR. ISRAEL: I will withdraw that. The indictment states what the grand jury's belief was. I believe that is all, Mr. Davis.



BY MR. MANAGER EDGE: We will call Mr. Schoen.

BY MR. ISRAEL: One moment, please. I would like to have the privilege of calling Mr. Hunter, the bookkeeper, on further re-cross-examination to straighten out this ledger account a little more.

BY THE PRESIDING OFFICER: The witness will be recalled.

R. W. Hunter, a witness produced on behalf of the complainants herein, having been heretofore sworn, now being recalled for further re-cross examination, testified as follows:

*Re-Cross-Examination—*

BY MR. ISRAEL: Q. Now, please speak up so that all of the senators can hear you. Now, Mr. Hunter, calling your attention again to this statement you made out at the direction of your superior officer of the account of John Schively, I find here the last item of charge to have been this check [*indicating*], number 5175, given on the 8th day of October to Mr. Schively, for two hundred and sixty dollars and fifty cents. I will show you this check. Now, the last charge on his account is on the 8th day of October, and it is a charge of that amount of money. That is correct, is it not?

A. Yes, sir.

Q. The check is wholly in the handwriting of Mr. Schrock, is it not?

A. Yes, sir.

Q. And it is not signed by anybody but Mr. Schrock?

A. No, sir.

Q. Now then, I will call your attention to the ledger account, page 275, Mr. Hunter. Now, at the time you made out this statement, this Schively account was not closed, was it?

A. No, sir.

Q. Not balanced; the last credit item that appeared on the ledger at the time you made this out [*indicating*] was the item of October 8th—Bennington, \$400?

A. Yes, sir.

Q. These items—Schrock, check 4055, journal page 198, \$30.00; and the item of October 8th, Com. Journal 199, \$36.35; and the item of October 8th, page 199, \$14.90; and the item of October 8th, insurance department fees, journal 199, \$351.75—to make the account balance, were entered on the ledger account here after this statement was made out? [*Indicating.*]

A. Yes, sir.

Q. This statement was made out after those entries were made?

A. [*Examining.*] Yes, that is correct.

Q. Now, as to the debit side of this ledger; there was nothing in there on the debit side after the account was made out, but all of the debits were there before the account was made out?

A. Yes; I might call attention to one item included in this. This \$30.00 item was in the account previous to that.

Q. You think this item of \$30.00, which was credited to Schively on October 8th and charged to Schrock, was on there before you made out this statement?

A. Yes.

BY MR. LEE: Do not make any marks on that statement there.

BY MR. ISRAEL: No, don't make any marks on that. I did not

notice what he was doing. Wait until I give you some scratch paper. Don't put anything on that exhibit.

A. [*Witness figures.*] That is right.

Q. That item was on the ledger previous to the time you made up this account? It was not one of the items that was added to the ledger to make it correspond with the account?

A. No, sir.

Q. Now, you made this out on the 9th or 10th of October, a day or two after this October 8th check came?

A. I think it was on the same date.

Q. These items, you say, were all on the ledger before the check was made out?

A. Yes, sir.

Q. Was this one made out after that? [*Indicating.*]

A. Yes, sir.

Q. Don't you remember it was either the following day or the day after the check came in—

A. It was only a day or so afterwards, if not on the same afternoon.

Q. But it was after the \$260.50 transaction?

A. Yes, sir.

Q. Now then, once more, page 198 of the journal seems to be the posting of the \$30.00 that was charged to Schrock and credited to Schively on October 8th, does it not?

A. Yes.

Q. And the check number is given as 4055. Now, just read the journal entry, page 198, in regard to that item.

A. This item here? [*Indicating.*]

Q. No, sir, the item below.

A. [*Reading.*] Page 198, October 8th; the entry is J. B. Schrock to J. H. Schively, check No. 5044. This entry is made as per instructions of J. B. Schrock.

Q. Check No. 5044. What was the date of check No. 5044?

A. September 24th, 1906—

Q. Read what the stub is.

A. W. J. Walker, amount \$120.00, account Schrock \$20.00, Copeland \$30.00, Schively \$30.00.

Q. Now, look at that statement of the charges against Schively and we find, do we not, that on September 26th in this account you have got him charged with \$30.00. That is true, is it not?

A. Yes, that is true; yes, sir.

Q. Now, let us have the stub that is called for in this journal entry of October 8th—this \$30.00 item—this entry made as per instructions of J. B. Schrock. Let us have that stub, gentlemen, [*addressing counsel for the opposite side*] of check No. 4055.

By MR. MANAGER EDGE: I do not know whether that is here or not.

By MR. ISRAEL: The stub is not here.

By MR. MANAGER EDGE: Those are the only stubs we have, Mr. Israel. [*Indicating.*]

A. That is an error in the number of the check, the notation.

Q. Then check No. 4055 was for losses that were paid?

A. Yes, sir.

Q. Mr. Schively had already been charged with the \$30.00 out of check No. 5044?

A. That should be the number of the check in that notation.

Q. Do you think, then, that they were attempting to give Mr. Schively credit with one-third of the \$120.00 on October 8th?

A. Yes, the contention was this: That Mr. Schively was—

Q. Never mind about that.

BY MR. MANAGER EDGE: Let him answer; he has the right to explain.

BY MR. ISRAEL: It is not responsive to my question.

BY THE PRESIDING OFFICER: What was the question? Answer the question.

A. I will answer that and say yes; they attempted to give him credit at that time.

Q. You are quite positive that entry was not ordered by Mr. Schrock on that date, because he was indebted to Mr. Schively in the sum of \$30.00, and did not tell you to charge \$30.00 against his account and credit it to Mr. Schively?

A. I do not understand that question now.

BY THE PRESIDING OFFICER: Read the question.

[*Question read.*]

A. That is on October 8th?

Q. That is on October 8th?

A. I wouldn't be positive as to that.

Q. Now, then, I show you a little paper here, and ask you what it is; have you ever seen any of these before, if you know what they are? [*Handing witness paper.*]

A. [*Examining paper.*] That is a certificate of membership—the receipt for membership.

BY MR. ISRAEL: Mr. Clerk, I would like to have that marked "Article 25, Defendant's Identification C."

[*Paper marked "Article 25, Defendant's Identification C."*]

Q. Now, Mr. Witness, I am going to ask you to take this bunch of canceled checks that are here in evidence, of payments made to John Schively, and I am going to ask you to take this scratch pad and I want you to go over Mr. Schively's account. I want to go over Mr. Schively's account with you from your books upon this proposition: From the 10th day of July until the 8th day of October, or for a period of three months less two days, you compute what would be due a man for a period of three months, less two days, at a salary of four hundred dollars per month.

BY MR. MANAGER EDGE: I object to that. That is a matter for the jury to determine. It is not a matter for the witness to testify to of what would be due a man three months at four hundred dollars a month. Any one knows that is \$1,200.00.

BY MR. ISRAEL: It is not. It is \$1,173.33 1-3.

BY THE PRESIDING OFFICER: The objection will be sustained.

BY MR. ISRAEL: I want to state to the members of the Senate that I want to show that John Schively committed no perjury when he testified that he was employed on a flat salary of four hundred dollars per month, and settled on the rate of four hundred dollars per month.

BY THE PRESIDING OFFICER: The objection has been sustained, Mr. Israel. It seems to me you can make your argument at the close of your case.

BY MR. ISRAEL: I wanted to say that with the books now I wanted to figure that they were not items of settlement.

Q. Now, you find, do you not, that a man working for a salary of \$400.00 a month, who worked three months, less two days, would have earned \$1,173.33 1-3, don't you?

A. Yes, sir.

Q. Now, then, we will take your items of this account and first take check No. 4022, for Northern Pacific railroad ticket, \$77.50, and charge it against the account. You have a check there for that amount, have you not?

A. I have not the check here.

Q. You have a check noted here for that amount? [*Referring to list.*]

A. Yes.

Q. Next charge him with traveling expenses, a check for traveling expenses, No. 4024, for \$74.25; next charge him on July 10th, the day he was supposed to go to work, with check No. 4245, for an advance of \$200.00 on account. Next charge him on October 27th by check No. 4760 for \$100.00.

BY MR. MANAGER EDGE: October 27th?

Q. August 27th, check No. 4760, for \$100.00; next charge him on September 24th with check no 5044, for \$30.00; next charge him on September 26th with check No. 5062, for \$22.00; next charge him in the same month, September 26th, with check No. 5069, for \$30.00; on September 29th, charge him with check No. 5077, for \$310.10. Is that right?

A. \$310.10, is it.

Q. Yes, sir. Next charge him on October 3rd with check No. 5135, for \$3.00; charge him again on October 6th with check No. 5167, with \$50.00; charge him on October 8th, the day that he left the company, with check No. 5174, for \$40.00. How much money has he drawn?

BY MR. MANAGER EDGE: We object to that, if the court please, unless counsel will read to him all the items of the account. Now, he has picked out a few items without going throughout the accounts, and asks him how much that is. That is not material. If he desires to put in all the items of the account, we have no objection to him doing so.

BY MR. ISRAEL: I am going to get them all in.

BY THE PRESIDING OFFICER: The objection is overruled, Mr. Edge. You can bring that point in on re-direct.

Q. What totals have you?

A. \$936.85.

Q. Please subtract that from \$1,173.33 1-3, that would be due the man for the labor during the two months and twenty-eight days, and what balance have you left due him?

A. \$246.58.

BY A SENATOR: \$236.00?

A. \$236.00, I should say.

Q. Now, then, take the item that is in the credit in this account and that you say is an erroneous marking of the check, and which reads, "Charge Schrock, credit Schively from Schrock," and which you say is erroneous, giving the wrong number of the check, as giving a check of the liability that was paid and which you say is not the

check numbered No. 5069, for \$30.00, you already charged against Schively, and you have a balance due the man of how much?

A. \$236.58.

Q. Now, add that \$30.00 due him to that \$238.58 due Schively and the result is what?

A. \$266.58.

BY A SENATOR: Forty-eight cents.

Q. The eyes of some bookkeepers are upon you, Mr. Witness. The amount is what?

A. \$266.48.

Q. Now, then, with \$266.48 due the man, giving credit for \$1.50 for postage stamps—add to that, \$1.50 for office supplies or postage stamps. Now then, charge against him a company receipt of membership for \$7.50 and deduct it from that amount. How much will be due him at the end of this period, October 8th?

A. \$260.48.

Q. Looking at the check that was given by Mr. Schrock to Mr. Schively on October 8th, when they settled up, and two days before you made up this account, and tell us how much the check was for, or tell us from this item? [*Hands paper to witness.*]

A. That is the last check that was given—\$260.50.

Q. Two cents more than the computation. Now, this \$260.50 check which came to your desk to be charged against the account of Schively, as you have stated, and you charged against the account of Schively before you were requested to make up Schively's account, resulted in this paper that we have here?

A. Yes, sir.

Q. Now, will you tell me whether I have omitted from the charges in your account against Schively in making this computation anything excepting the three \$400.00 items charged against him on the Ward notes?

A. [*Witness examines list.*] You have omitted four checks. There are two checks omitted outside of the three \$400.00 items.

Q. What are they?

A. Check No. 3921.

Q. That is the first item of \$200.00?

A. Check No. 4760 of \$100.00; July 1, check No. 3921, \$200.00; on August 27th, check No. 4760, \$100.00.

Q. What is that? [*Pointing.*]

A. That is one check, \$200.00, No. 3921.

Q. Which is on July 1st, ten days before the man went to work, and is marked "Insurance department fees," isn't it?

A. Yes, sir.

Q. I have not omitted anything else excepting the \$400.00 checks, have I?

A. Outside of that, no.

Q. Now, sir, I want to ask you, as an expert accountant, a hypothetical question, and I want you to make the demonstration for this Senate. This is a supposititious case—we are supposing this—it is a hypothetical question. Supposing that John Schively went to work for the Live Stock Company on the tenth day of July on a flat salary of \$400.00 per month. Suppose that he drew, during his term of office, these amounts that you have gotten charged against him here, excepting the three items of \$400.00 each and the item of insurance examination ten days before, on July 1st, of \$200.00. Supposing that he drew all of those moneys between the 10th of July and the 8th of October,

and suppose that he never had anything to do or knew anything about the three items of \$400.00 charged against him, and had never made any agreement to pay those items; and suppose that on the 8th day of October, 1906, when he severed his connection with the company, that the manager of the company was indebted to him in the sum of \$30.00 and the company was indebted to him for an advance on that day of \$1.50 in postage; and suppose the company held a charge against him in the cash till of the \$7.50 due the company for a membership receipt, which he had never paid and desired to settle off with him, giving him credit \$1.50 advanced that day, and charging him with \$7.50 and only charging him with all of these items that he drew—excepting the three \$400.00 items and the July 1st examination, \$200.00; how much money would the company have to pay him that day to settle with him.

BY MR. MANAGER EDGE: If the court please, I object to that question. A hypothetical question should not be based upon some evidence that is in the case. There is no evidence here in reference to any membership certificate or any charge or anything of the other matters by which he has arrived at this calculation of his own. Now, if at the conclusion of this evidence there is evidence to substantiate some of these items, then, if this question is material, it might be proper, but it is not proper on cross-examination.

BY THE PRESIDING OFFICER: The objection is overruled; answer the question.

Q. What would be the amount of the check you would give the man on that day?

A. Exactly the same amount.

Q. \$260.48?

BY MR. MANAGER EDGE: I object to that. Let him answer the question.

BY MR. ISRAEL: He says exactly the same and I say is that the amount which you mean?

A. That is what I mean.

Q. \$260.48?

A. Yes, sir.

Q. And what amount did Schively receive on that day?

A. \$260.50.

BY MR. ISRAEL: Take the witness.

BY SENATOR FALCONER: May we not have a carbon copy of this account placed on the desk of each member of the Senate?

BY THE PRESIDING OFFICER: I will refer that matter to the secretary.

BY MR. MANAGER EDGE: I will be very glad to have that matter of the copies of the accounts in the ledger transcribed and furnished to the Senate.

BY MR. ISRAEL: I think the whole thing ought to be transcribed—the ledger account, and this thing, both.

BY MR. MANAGER EDGE: Ledger account and that statement.

BY MR. ISRAEL: The witness testified that there were certain items in this statement added on after this statement was given to complete the balance in this account.

BY THE PRESIDING OFFICER: By the consent of the Senate, that work will be ordered to be performed as soon as possible.

*Re-Direct Examination—*

BY MR. MANAGER EDGE: Now, Mr. Hunter, on the cross-examination by Mr. Israel, he has asked you to credit Mr. Schively with salary at the rate of \$400.00 per month. Now, according to the books and records of the company, and the fact, if you know it, what was he actually credited with, as shown by the books of the company?

A. He was credited on a commission basis.

Q. How much did that amount to each month? [*Hands book to witness.*] State at the end of each month of his income entry, what he was actually credited with?

A. July 31st, \$600.00; in August, \$563.65; in September, \$600.70; in October there are several items; I will read them as follows: \$400.00.

Q. For what?

A. That \$400.00 is credited by Bennington.

Q. Just explain what that entry is for.

A. That entry is made according to instructions received from Mr. Schrock—some agreement between Mr. Schively and Mr. Bennington.

Q. Concerning what, if you know?

A. As I understand it, Bennington was a trustee of the company and officer.

Q. When?

A. He came in about the time Mr. Schively went out.

Q. And what is your understanding as to what that \$400 was for?

A. My understanding—

BY MR. ISRAEL: Now, if the court please, I object to his understanding. Let the witness testify, if he knows.

BY THE PRESIDING OFFICER: If you know what it was for, Mr. Witness, state.

BY MR. MANAGER EDGE: Q. If you know of your own knowledge. Don't relate what somebody told you, Mr. Witness.

A. That is the only knowledge I have.

BY MR. ISRAEL: Then, your honor, he should not state it.

BY THE PRESIDING OFFICER: The objection is sustained, unless he knows.

Q. Take the next item.

A. The next item is for \$30.00, from Mr. Schrock. Another item is \$36.25.

Q. Do you know what that is for?

A. There was some dispute arose in regard to the commissions for a certain amount, and it was finally allowed Mr. Schively—that difference of \$36.25. There was also another item, commission on the same order, amounting to \$14.90.

Q. What is the date of the items?

A. October 8th.

BY MR. ISRAEL: All October 8th. These were the items you testified you put in the evidence after the amount was made up, which you just read.

A. Yes, sir; and on the same date there was a credit allowed, a formal charge of \$351.75.

BY MR. MANAGER EDGE: That represented what?

A. That represented "Insurance department fees," as I have said it.

That should have been charged to the insurance department?

A. Fees; and was so charged eventually.

Q. It was wrongfully charged to Schively in the first place and afterwards credited to him in order to make the matter right?

A. Yes, sir.

Q. Now, including that \$351.75 which was charged and which was credited to him there, what does the total amount to?

A. The total credits—

Q. Including that, I say.

A. Oh, including that, is \$2,597.35.

Q. Now, deduct from that, Mr. Hunter, those items which were wrongfully charged, and what balance did he actually receive, personally?

A. What do you mean, credit that he received?

Q. On the credit side of this ledger is shown the amounts of money that was paid him, as I understand; is that right?

A. It shows the credits allowed him.

BY MR. ISRAEL: Let me suggest to counsel that the witness has testified that there were enough items added on the 8th to balance the other side of the account.

BY MR. MANAGER EDGE: Just let me proceed, Mr. Israel.

BY THE PRESIDING OFFICER: Let Mr. Edge ask the witness.

Q. His credits then amounted to \$2,245.60, over and above the \$351; is that correct?

A. Yes, sir.

Q. And how much money was charged to him on the other side of the ledger, or how much do the books show was paid him to settle that?

A. Well, now, to answer that—

Q. Well, it was balanced off, was it not?

A. It was balanced off.

Q. How much do the sums amount to with which he was credited on the 8th of October, at the time the settlement was made—those smaller sums?

A. I don't understand your question; at the time of the settlements, you say?

Q. Yes, on October 8th.

A. In October there was a difference in the account of \$400.

BY MR. ISRAEL: That Schively was supposed to owe the company that much—be indebted to the company?

A. No, I don't take the question that way.

BY MR. ISRAEL: I don't understand your answer.

Q. Well, just explain it then, Mr. Hunter; when you came to settle up with Schively you say there was a difference of the sum of \$400?

A. Yes, sir.

Q. And how was the difference adjusted?

A. It was adjusted by charging \$351.75 to "Insurance department fees" account and giving Mr. Schively credit for the same and the difference was charged commissions and allowed Mr. Schively's account to make it up.



Q. Then, when you came to settle up with him, he had claimed he was charged with \$400 too much, or rather had not been credited with \$400 of what he should have been?

A. Yes, sir.

Q. And in order to balance the account, upon checking over it, you found him charged with \$351.75 that should have been charged the insurance company; and these other small items represented what, if you know?

A. They represented differences in commissions that should have been allowed Mr. Schively.

BY MR. MANAGER EDGE: Q. Did you ever hear of any statement on the basis of \$400 a month flat salary?

A. It came to me in a way that there was some talk of it, rather indirectly.

Q. Well, just state, then, how the statement was made—what was said and done by all of the parties, what the actual facts were?

BY MR. ISRAEL: That is, if you were present at the making of the entire statement. You were not, were you? As I understood this witness, he testified that as second bookkeeper he overheard some of the conversation between Schrock and Schively, but he has not testified to all of the statements.

BY MR. MANAGER EDGE: I will ask him what the facts were, what happened so far as he knows at the time that statement took place. What do the facts show?

A. As I understand it, Mr. Schively wanted a statement of his accounts. At that time there was a difference in the account of \$400, which he owed the company. There was some argument about the account and Mr. Schively and some of the other officers—Mr. Schrock, I believe—went over the matter together and they decided upon a statement of account as I have shown here in the last item, giving credit to Mr. Schively for that difference and charging it to the various accounts which it should have been charged to formerly.

Q. That account upon which a statement was reached showed that Mr. Schively was credited with salary upon a commission basis, and not upon a salary basis; the account shows that, does it not?

A. The account shows that, yes.

Q. Now, these two items, Mr. Hunter, which Mr. Israel asked you to include in the statement which you figured up under his direction—these two items of \$77.50 and \$74.50—did they not make up a part of the \$300 and the \$51.75 which was stricken out of the account as having been wrongfully charged to him?

A. I will have to look that up on the original books.

BY MR. ISRAEL: You need not look it up. I will admit it. Your books show you took \$200 on July 1st, commissions, and you have the railroad fare, the account of his traveling expenses—ticket—charged against him, and made up the item of \$351 of it and credited it to his account there on your record after you had credited on this account.

BY MR. MANAGER EDGE: Well, that may be a part of the \$77.50 and \$74.50. If the other \$200 had been paid as insurance payments, it would make \$351.

A. Yes.

Q. And they were afterwards corrected by being credited to his account?

A. Yes.

Q. So that balance and general change made up the ultimate conclusion that was reached?

A. That was the idea when the correction was made.

Q. So that \$74.25 and \$77.50 which counsel asked you to include, that did not figure in the transaction one way or the other, because it was charged and afterwards credited.

A. Yes.

Q. And the account would have been the same if those items had never been in it, would they not, as they were first charged and afterwards credited?

A. Yes, I should think they would, undoubtedly.

Q. And if those had not been included in the supposititious case which counsel asked you to figure up for him—if these hadn't been included in that, an entire different conclusion would have been reached?

A. Yes, sir.

Q. Now, you say you undertook to settle up with Schively yourself and were making the statement on the basis of the commissions that you had credited to him—

BY MR. ISRAEL: No, I object to that. He never stated that he ever settled with Schively at all.

BY MR. MANAGER EDGE: I did not say that he did. I said that he undertook to.

BY THE PRESIDING OFFICER: Has this witness testified that he had a settlement with Schively or that it was turned over to him to adjust?

BY MR. MANAGER EDGE: No, not that, but he and Schively had first gone over this account and there was a difference of \$400 which he undertook to rectify.

BY MR. ISRAEL: You have not testified, Mr. Hunter, that you and Schively ever attempted to adjust this account, have you?

A. I believe I testified that Mr. Schively and I had some argument over the account.

BY THE PRESIDING OFFICER: You may answer the question.

BY MR. MANAGER EDGE: Q. When you and Mr. Schively went over the account at the time he severed his connection with the company there was a difference of \$400?

A. Yes, sir.

Q. Now, you were proceeding in that discussion with him—you were going on a theory of his having received a credit on the commission basis of \$563 or \$600 a month?

A. Yes.

Q. And that developed a difference of \$400 between you, didn't it?

A. Yes.

Q. Now, I will ask you to look at this record and ask if from that you can tell how you got together finally—settled that \$400 discrepancy?

A. On this paper here are some figures I made in correcting this account; it shows a balance due the company of \$400. It shows check 3921, \$200; check 4022, \$77.50, and check 4024, \$74.25, a total of \$351.75; it was an item of Mr. Schively's account that was charged back to the insurance department fees. There was a difference in commissions allowed in August of \$36.35, which was allowed Mr. Schively again that same date.

BY MR. ISRAEL: August 8th.

A. August 8th; and also a difference in September commissions of \$11.90, which was allowed the account to balance.

BY MR. MANAGER EDGE: Q. And your discussion upon the commission settlement on the commission basis showed that Mr. Schively had been charged \$400 too much; that is correct, isn't it?

A. Yes.

BY MR. ISRAEL: \$409—too much, according to your figures.

BY MR. MANAGER EDGE: Q. Now, in order to straighten out that \$400 which he had been charged excessively, he was credited the \$351.75 which should have been charged to the insurance company. He was credited with \$36.25 commissions which were allowed him in August, \$11.90 as commissions allowed in September to balance, and those three items when they were credited to him made up the \$400, which was a difference between you, is that correct?

A. It is.

Q. That was settled upon the basis of commissions?

A. Yes, sir.

Q. And at the time you discussed this settlement with Mr. Schively, did he contend then that he should be settled with on the basis of \$400 a month flat salary?

A. There were no such arguments brought up.

Q. Was there any contentions of that kind made by Mr. Schively?

A. Not to me—none that I know of.

Q. At the time you examined that ledger account, which showed that he had been credited with commissions which made a different amount at the end of the month, was he with you at the time you looked at that?

A. He looked over the accounts at that time with me.

Q. And he looked over this statement which is in evidence here and made those marks upon that paper which shows that he was credited upon a commission basis and not upon a salary basis?

A. I assume that those are his figures, although I can't say that I saw him make those figures.

Q. Well, what is your judgment, Mr. Hunter, as to whether they are or are not?

BY MR. ISRAEL: I object to his judgment; he testifies that he didn't see them made.

BY MR. MANAGER EDGE: I withdraw the question

Q. Are you familiar with Mr. Schively's handwriting?

A. Yes.

Q. To the best of your judgment, were those lead pencil marks made by Mr. Schively?

A. Yes.

Q. You handed him this statement, didn't you?

A. Yes.

*Re-Cross-Examination—*

BY MR. ISRAEL: Q. And I understand that Mr. Schively claimed that, instead of the commission item of \$563.65 credited him on August, he should have been credited with \$600?

A. Yes, that is the outcome.

Q. That was the outcome of it?

A. Yes.

Q. And instead of \$578.70 credited on September, he should have been—he should have had \$600?

A. Yes.

Q. And he should have been credited for the \$200 and the \$77.50 and the \$74.25; that is true, isn't it?

A. Yes.

Q. And that was the deduction that you gave him in order to balance off the \$400?

A. Yes.

Q. Take your pencil and put down \$277.57 and \$74.25; add it up.

A. I wish to correct myself right here. I didn't intend to balance off \$400. What I do contend, though, is—

Q. Well, under your theory, Mr. Hunter, in settling with Mr. Schively your first account showed a balance against him of \$400?

A. Yes.

Q. Now, he challenged the \$200 item and the \$77.50 item and the \$74.25 item, making a total of \$351.75?

A. Yes.

Q. And he claimed it as a credit; that is correct, is it?

A. Yes—He did not claim that it was a credit; he claimed that it was charged him in error.

Q. Charged in error, so it would effect the \$400 that he apparently owed the company?

A. Yes.

Q. He also claimed that in the month of August he was entitled to \$600 millage—and one of \$563.65?

A. He didn't claim that to me. My understanding of the conversation between Mr. Schrock or the officers and Mr. Schively is that.

Q. You got your instructions from these other people how to make these credits?

A. Yes.

Q. All right, then; what is the difference—what difference did you credit him between the \$600 and the \$563.65 under those instructions?

A. One item here of \$36.35 and another of \$14.90.

Q. Take the first item of \$36.35; that is the difference between \$600 and \$563.65, isn't it?

A. Yes.

Q. And the other item is what?

A. \$578.70 is the other item; \$14.90 is the difference allowed.

Q. And what total does that make?

A. A total of \$403.

Q. As an offset against the \$400 that Schively would apparently owe the company on the erroneous account?

A. Well, there is a difference of \$3 in the account previous to that time. On my notation it was \$11.90, you will notice, which balanced the account at that time; there was an error in the charge of \$3—a \$3 charge that was never made—and that was in that account that way and was put in as \$14.90.

Q. Three-dollar charge of what kind?

A. I will have to look that up.

Q. In taking into consideration that the charge was in error at that time, the account wouldn't balance by \$3, but would be \$3 due Schively?

A. Would be \$3 due Schively, according to that statement there.

Q. Did Schively get a check for that \$3?

A. No, I don't think he did.

Q. Now then, you have told me that you understand that the company in settling with Schively on the millage basis and upon his claim for millage allowed him the difference between \$600 and \$563.65 for the month of August?

A. Well, that is what I understand.

Q. That is the way it was charged up on the books?

A. Yes.

Q. Now then, if he was only credited with the \$578.70 millage for September and should have been at \$600, he would be entitled to a credit there of some \$14, wouldn't he?

A. Yes.

Q. And if you use that \$14 in your figures, it would make his entire total \$403, instead of \$400?

A. Yes, \$403.

Q. But there was never any check issued to Schively for the \$3.

A. No, sir.

Q. But on the ledger there was a charge of an error of \$3?

A. There was an error at that time of \$3, in the footings, I presume.

Q. Now then, one more question; taking your books that you have been through, taking your books on the 8th day of October to have been a true application of Schively's account, or all of the charges down to that time when he left the company and was handed by Mr. Schrock a check for \$260.50, it overdrew him nearly \$800, did it not, according to the books?

BY MR. MANAGER EDGE: We object to that question unless he desires to go into the qualifications of this witness, because it calls for the conclusion of the witness.

BY MR. ISRAEL: He is an expert. I am asking this witness if, taking the books to have been true on the 8th day of October, of Schively's account of the charges down to that time when he left the company and was handed by Mr. Schrock a check for \$260.50, it overdrew him nearly \$800?

BY THE PRESIDING OFFICER: If he knows, he may answer the question.

BY MR. MANAGER EDGE: Well, I don't understand the question myself, and I don't see how the witness can.

BY MR. ISRAEL: The witness is a bookkeeper.

A. I don't understand the question.

BY MR. ISRAEL: Q. Suppose on the 8th of October that your books, just as they were on the 8th of October, with no more credits on—you say these credits here were put on after the 8th of October; but on the 8th of October, when you came to post the Schrock check for \$260.50, after Schively had gone, if you had taken a balance then, the Schively account would show itself \$400 or \$500 overdrawn, wouldn't it?

A. Yes, sir, it would.

Q. And that is the situation that the manager is trying to settle off on the millage basis?

BY MR. MANAGER EDGE: Q. When the proper corrections were made, there wouldn't be any discrepancy at all on the millage basis, would there, Mr. Hunter.

A. No, sir.

BY MR. ISRAEL: Q. In other words, the book, by taking certain items

and putting certain amounts on the credit side and certain amounts on the charging side, could be made to balance, couldn't it?

[No response. Whereupon a recess for five minutes was taken.]

BY THE PRESIDING OFFICER: The prosecution will call its next witness.

BY MR. MANAGER EDGE: We will call Mr. Donovan.

Mr. William C. Donovan, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. State your full name, please.

A. William C. Donovan.

Q. Where do you live, Mr. Donovan?

A. Spokane, Washington.

Q. How long have you lived there?

A. Four years.

Q. How long have you known of the Pacific Live Stock Association?

A. Four years.

Q. Were you brought into contact with the company during the time Mr. Schively was president of it?

A. I was.

Q. In what capacity?

A. I was connected with the bonding company that furnished the bond for the Pacific Live Stock Association, for its officers and employees.

Q. In such capacity were you in a position to know whether or not, or in what manner, the officers of the company, including Mr. Schively, were paid compensation?

A. I was.

Q. State, if you know, upon what basis Mr. Schively received his compensation during the time he was president?

A. On a commission basis.

Q. State how you know that and how you secured that information?

A. In the application of all the officers and employees of the Pacific Live Stock Association, among the questions required to be answered by the applicant, it was asked whether or not they received their compensation as salary or commission, and they answered they received their compensation on a commission basis.

Q. Do you recall the application of Mr. Schively in that connection?

A. I do.

Q. And what did it recite as to the salary.

A. That he received his compensation on a commission basis.

Q. Where is that application now, Mr. Donovan?

A. I do not know. It is an eastern company.

Q. Have you endeavored to have it returned out here?

A. I have.

Q. With what success?

A. The company refused to send the application to me.

Q. What is your official capacity in Spokane county now, Mr. Donovan.

A. I am deputy prosecuting attorney of Spokane county.

Q. In such capacity were you with the grand jury on or about the 20th day of April of this year?

A. I was.

Q. Were you present at the time Mr. Schively was called and sworn?

A. I was.

Q. State what the witness Schively was asked and what his answers were in reference to the agreement between him and Mr. Ward by virtue of which he was to receive—take Mr. Ward's place in that Live Stock Company?

A. He was asked—

Q. Just in substance will be sufficient, Mr. Donovan.

A. Yes; he was asked whether or not he had any agreement with Mr. Ward and he denied that he had any agreement. He was asked whether he had paid Mr. Ward for Mr. Ward's millage, as it was called in the Pacific Live Stock Association, and he stated that he had paid nothing to Mr. Ward for his millage in the Pacific Live Stock Association. He was asked what he had received as compensation as an officer in the Pacific Live Stock Association, and he said that he had received a straight salary of four hundred dollars a month. He was asked whether or not his connection with the Pacific Live Stock Association on a salary basis was different from the other members of the association, and he said that he knew nothing with respect to them, but he had never received any commission, but had received a straight salary.

Q. What was asked him, and what were his answers, with reference to the three notes which were given to Mr. Ward about the time Mr. Schively went in?

A. He said that he never knew of the signing—said he never had signed any notes payable to Mr. Schrock, or to Mr. Ward, or any other person for Mr. Ward's interest, and that he had never indorsed any notes to Mr. Ward or any other person for Mr. Ward's millage; that he knew nothing whatsoever of any notes of Mr. Ward for Mr. Ward's millage, and that he was not responsible and should not be chargeable for any notes given to Mr. Ward for his millage.

Q. When asked in reference to a check issued by the company to the Fidelity National Bank, and upon which was Mr. Schively's signature, what did he testify? What were the questions and answers upon that subject, if you remember?

A. He was asked if he knew the purpose of the check. Give me the check and I can give you the number.

Q. Before we get to that, did the grand jury have in its possession at that time the checks, papers and so forth of the Live Stock Company?

A. The grand jury had in its possession at that time all of the books, all of the papers, memoranda, checks, entries, stubs, and everything pertaining to the Pacific Live Stock Association.

Q. Then, when that check was called to his attention, what were the questions and answers in regard to that subject?

A. Check No. 5134, dated "Spokane, Washington, 10-3, 1906. Pay to the order of Fidelity National Bank four hundred dollars. (Signed) J. H. Schively, president; J. B. Schrock, general manager." He said he had no knowledge whatever of the purpose for which this check was issued.

Q. When asked about how much he received from the company as compensation, what were his answers to the questions?

A. He was asked as to what his compensation was, and he said

that he would stand good for the check upon which his signature was attached as an indorsement.

BY SENATOR STEVENSON: I did not hear that answer.

A. He said he would stand good for the check which showed his indorsement on the back. I showed him all of the checks which we had in our possession at that time. If you will let me have them, Mr. Edge—

[*Mr. Edge hands check to witness.*]

A. [*Reading*] One check, 5174, dated October 8th, for \$40.00; signed J. B. Schrock, general manager; indorsed, J. H. Schively, W. J.—I think it is W. J. W-a-t-e-r.

BY MR. MANAGER EDGE: W-a-l-k-e-r, Walker.

A. Walker. He acknowledged that he received that sum. Check 5167, dated October 6, 1906, payable to J. H. Schively, \$50.00; signed by J. B. Schrock, indorsed by J. H. Schively and J. Williams, a saloon-keeper there. He acknowledged having received that check.

BY SENATOR COTTERILL: What was the amount?

A. \$50.00. Check 5175, dated October 8th, 1906. "Pay to the order of J. H. Schively, \$260.50; (signed) J. B. Schrock; indorsed by J. H. Schively, and Henry F. Sorg—a saloonkeeper, I guess he is—as having received that sum. Check No. 5135, payable under date of October 3rd. "Pay to the order of J. H. Schively, \$3.00; signed by J. H. Schively and J. B. Schrock; indorsed, J. H. Schively, and Herrick & Kinsey, saloonkeepers, as having been received by them. Check 4245, under date of July 10th, 1906. "Pay to the order of J. H. Schively, for two hundred dollars"; signed by E. R. Ward, president; J. B. Schrock, general manager; indorsed by J. H. Schively.

BY MR. ISRAEL: What is the date of that?

A. July 10th.

BY MR. ISRAEL: Q. July 10th?

A. Yes; check 5077, under date of September 29th, 1906, payable to J. H. Schively, \$310.10; signed by J. H. Schively and J. B. Schrock; indorsed by J. H. Schively as having received the money on that check. Check 5069, dated September 28th, payable to J. H. Schively, \$60.00; (signed) J. H. Schively, president, and J. B. Schrock, general manager; indorsed by J. H. Schively as having received that check. Check No. 5062, dated September 26th, 1906, payable to the order of J. H. Schively, \$22.00; signed by J. H. Schively, and J. B. Schrock, general manager, and indorsed by J. H. Schively as having received that check. Check 4760, dated August 27th, 1906, to J. H. Schively, \$100; signed by J. B. Schrock, general manager; indorsed by J. H. Schively, Thomas J. Williams, as having received that check. Those were the only checks, so far as I have here that refer to his—or during the time that he was an officer of the company, with the exception of the three checks for four hundred dollars each.

BY MR. MANAGER EDGE: Q. Those checks—

BY SENATOR PRESBY: I kept track, and there seems to be some difference there. How many checks are there?

BY THE SECRETARY: There are nine.

BY SENATOR PRESBY: There is not a check there for six dollars, is there? I think it must have been a mistake—

BY THE PRESIDING OFFICER: Hand the checks to the senator and let him examine them.



BY THE SECRETARY: Shall I read the amounts? \$40.00, \$50.00, \$260.50, \$3.00, \$200.00, \$310.10, \$60.00, \$22.00, \$100.00—nine checks in all in that bunch.

BY THE PRESIDING OFFICER: Proceed with the examination.

Q. Are you able to state, from your examination of those checks, what the aggregate is of the money that he acknowledged having personally received?

A. No, sir; I have not figured it up.

Q. In what way, Mr. Donovan, if you know, did the inquiries as to these checks become material before the grand jury? Why did they make this inquiry?

A. The grand jury was investigating the Pacific Live Stock Association. The charge had been made to the prosecuting attorney of Spokane county that there had been embezzlements of the fees of the company, and that by reason of the embezzlements the company had been forced into the hands of a receiver. In making the examination of the books it was found that three checks of four hundred dollars each had been charged against Mr. Schively's account—had been paid ostensibly to the Fidelity National Bank of Spokane. There being no account on the books of the company with the Fidelity National Bank covering these checks, it was important to determine whether or not any officers of the company had been guilty of the embezzlement of these funds, or whether these amounts had been paid to Mr. Schively as charged upon the books and charged to him.

Q. Here is a statement which has been admitted in evidence, Mr. Donovan. I will ask you whether or not that statement was exhibited to Mr. Schively before the grand jury? [*Handing witness statement.*]

A. [*Examining*] It was. This is article No. 25, numbered 14. Is that the one?

Q. Yes. State what the questions were as near as you can, and what he testified to in reference to that statement?

A. This statement shows a total debits of two thousand five hundred and ninety-seven dollars and thirty-five cents, and shows a balance due the Pacific Live Stock Company of four hundred dollars. Mr. Schively was asked concerning this, relative to his knowledge of the items under July 1, three checks numbering 3921, 4022, 4024; check under date of August 2, numbered 4520, for four hundred dollars; under date of September 5th, check No. 4820, payable to "Fidelity," and check under date of October 3, 5134, payable to "Fidelity." He said that the amounts were correct in total. But he said that he did not itemize the bill and that if there were any charges on this account from the Fidelity National Bank he knew nothing of it. He said that on the credits, in response to an interrogatory relative to commissions of three mills on July 31, Aug. 31, September 30th, that he had no knowledge of any commissions—that he did not receive any commissions. He said that he had received only \$400.00 a month during his term of office. I asked him as to these pencil memoranda and he said those were in his handwriting and they indicated the balance due him. They were for \$200, \$77.50, \$74.25, making a total of \$351.75, which he said was due him for insurance department fees prior to his connection with the company. The other items, he said, were due him for compensation.

Q. What do you mean by "other items" there, Mr. Donovan?

A. There are several items, one of \$600.00—\$578.70—showing, according to these figures, a subtraction leaving \$21.30; another item of \$600.00—\$563.65—showing a subtraction of \$36.35; another item of \$57.65—\$19.50—showing a subtraction of \$38.15. On the outer margin

there is an item of \$100.00—\$400.00 evidently added—\$500.00. To the right of that \$565.00, \$19.50. On a third column—on the fourth column there are lines drawn against the items showing July, August, September, July, August, which he acknowledged were in his own handwriting.

Q. What were those checkmarks down the side of the column of figures?

A. He explained that he had checked off the various months and the amounts he had received during those months.

Q. Did Mr. Schively have any objection to testifying before the grand jury?

A. None whatever. In fact, the first question put to him by myself was whether he had any objection to testifying before the grand jury, and he said none whatever. During the examination he was before the grand jury a day and a half, and at frequent intervals he stated that he had no hesitancy in giving the grand jury all the information he could; that he waived any rights he might have had, and that he wanted to fully and freely give the grand jury all the information he had pertaining to the Pacific Live Stock Association or any other matter.

*Cross-Examination—*

BY MR. ISRAEL: Mr. Donovan, when were you a solicitor for liability insurance?

A. In 18— Let me see—just four years ago this last July.

Q. Not 18— 1905, July, 1905?

A. 1905.

Q. How long were you a solicitor?

A. For two and a half years—three years, practically.

Q. When did you first begin?

A. I began in July. No; I began in 1906, in the spring of 1906.

Q. And how long did you continue?

A. If my recollection serves me right, from May until last July.

Q. What field were you soliciting in?

A. Spokane county.

Q. Have you an office of your own?

A. No; I was employed by firms there.

Q. What firms employed you?

A. The first was Downs & Wheeler Company.

Q. And who else?

A. I was with Downs & Wheeler Company for about six months and then I went with J. E. Foster.

Q. And then whence?

A. And when Mr. Foster surrendered his agency, in February of last year, I think it was, I became identified with the Ham-Yearsley-Riley-Philbrick Company.

Q. Any one else?

A. That is all.

Q. What companies did you represent with the first employment?

A. The bonding company. The first was—

Q. What bonding company?

A. I cannot give you the full name now, but it is of Scranton, Pennsylvania.

Q. And what company did you represent with the second employment?

A. We had no bonding company.

Q. You had no bonding company?

A. We had not. The Aetna Liability Company.

Q. That is liability; how long did you represent the Scranton company?

A. About six months.

Q. First time in the spring?

A. First time in the spring.

Q. Did you represent the Scranton company when you claim that this liability of Schively's was written?

A. Yes, sir.

Q. Did you write any other insurance in Spokane—solicit any other insurance in Spokane—excepting the Schively insurance?

A. Yes, sir.

Q. In soliciting?

A. In soliciting.

Q. Did you have a license from the State of Washington to solicit insurance in 1906?

A. Yes; Mr. Downs—he was the senior member of the firm—told me that he had paid for my license.

Q. You know of your own knowledge that you had a license to solicit insurance in 1906?

A. Yes, sir.

Q. Did you ever see your license?

A. Yes, sir.

Q. Made to you?

A. Yes, sir.

Q. From the insurance department of the State of Washington?

A. Yes, sir.

Q. Where is the license now?

A. It is over in Spokane.

Q. When did you write the insurance on Schively?

A. Why, when Schively came in there; it was some time in July. Every officer—Schively among the number—Mr. Schively made an application and the application went through to the home office—not the home office, but went to Seattle—and the bonds were sent over there.

Q. Was that the first application from the officers of this company that you had handled?

A. No, sir.

Q. When did you handle an application before?

A. I think in April or in May.

Q. Of that same year?

A. Yes, sir.

Q. Who had you bonded at that time?

A. Who had I bonded?

Q. Yes, sir; of that company?

A. Well, we wrote a large number of bonds—appeal bonds, lawyers' bonds—

Q. Who did you bond in this Live Stock Company in April, 1906?

A. Mr. Hilliker—no, not Hilliker; Mr. Schrock. Paul Shallenberger, the bookkeeper; Mr. Ward, Mr. Walker, and the other officers.

Q. What other officers?

A. Hunter and a large number of agents in the field.

Q. How much did you bond these officers for?

A. Mr. Hunter for \$5,000.00; Mr. Schrock, I think, for \$5,000.00 or \$3,000.00—I would not be positive. They had a schedule of bonds that they followed in the handling of the business. The agents were bonded for from \$500.00 to \$1,000.00.

Q. I don't desire to distrust anybody but the officers. What amounts did you bond these officers in at that time—in April, 1906?

A. Well, I think Mr. Walker was \$5,000.00; I would not be positive—may be \$3,000.00. I think Mr. Hunter was \$5,000.00. I know he was at one time. I would not pretend to state the various amounts, but all the way from \$3,000.00 to \$5,000.00.

Q. But you cannot remember the various amounts as to each officer in April?

A. No, sir.

Q. How long did their bonds run for?

A. Their bonds ran for a year.

Q. Until 1907?

A. All depending on the time they went in.

Q. Well, did you bond them all at one and the same time in April?

A. No, the officers change from time to time and as they fluctuated in the office the bonds were written.

Q. But each time you wrote one of these officers you wrote him at a millage basis and a commission basis of salary?

A. Wrote them all, yes.

Q. And made out the applications for them?

A. No, sir; they made out the applications themselves—or the bookkeeper did—but they were signed by the officers.

Q. The Schively application was made out by the bookkeeper and signed by Mr. Schively?

A. I don't know who it was made out by.

Q. You don't remember who made out the Schively application?

A. No, sir. The business was done in this way: We had the bonding business and whenever the bonds were ready they sent for us—sent for me; and I went over there and secured the application and forwarded it to the Seattle office.

Q. Do you recollect going after the Schively application?

A. I recollect going after the Schively application; yes, sir.

Q. And receiving it from the bookkeeper?

A. I would not pretend to say who I received it from.

Q. Who did you receive it from?

A. I cannot tell you that.

Q. You don't say you received it from Schively?

A. No, sir.

Q. No; and you sent it to the Seattle office?

A. Yes, sir; that was where they all went.

Q. You say it was not wholly in the handwriting of the bookkeeper?

A. I won't say it was not, but my recollection is the signature was Schively's signature, because of its peculiar formation.

Q. You have got a good many peculiar signatures in bonding those agents in the field and bonding people all over Spokane, haven't you?

A. Well, I have seen Mr. Schively's so many times, and my recollection—

Q. You hadn't seen it very often at that time?

BY MR. LEE: Let him go ahead and finish his answer.

A. I say at that time I knew the signatures of the field men; I knew Mr. Schrock's signature, Mr. Ward's signature, Mr. Hunter's signature; and my recollection is that Mr. Schively signed the application as the other officers had done.

Q. Well, you were not familiar at that time with Schively's signature?

A. No, sir.

Q. You must depend upon your recollection—your present knowledge of Schively's signature—to check back to the recollection of then as to whether that was Schively's signature?

A. Well, my familiarity or knowledge of Mr. Schively's signature now leads me to believe that it was his signature at that time.

Q. Yes, that is what I am getting at.

A. Yes.

Q. You tell the Senate that your present knowledge of John Schively's signature is such that you can go back to July, 1906, and conjure up in your brain now a signature that you then saw which at that time was a strange signature, and state now that the signature you saw then was John Schively's signature?

A. I am not conjuring, but we had to determine at the time of the application that the signature was a signature of the man who pretended to sign it, because of the responsibility and liability for the bonding company.

Q. You did not see John Schively sign it?

A. I did not see John Schively sign it.

Q. But you say now it was John Schively's signature, although you admit that at the time it was a strange signature to you, because of your present knowledge of his signature?

A. I say that at that time I did not know his signature—that is, I had never seen him sign it. I had signed letters which purported to come from John Schively in the insurance department, and for that reason I was convinced that it was John Schively's signature.

Q. At that time?

A. Yes, sir.

Q. Then, it is not true that at this time it was an unfamiliar signature to you?

A. It was unfamiliar in so far as my personal knowledge that it was his signature.

Q. But it was not so unfamiliar but what you knew it was John Schively's signature from things you had seen before that?

A. I had seen it from other letters I had received from John Schively.

BY MR. MANAGER EDGE: Now, if the court please, if there was any contention here that this was a forgery, there might be some benefit in going further. If counsel contends his signature is forged, then we might go into it. But I think, for the purposes of this hearing, he has gone far enough.

BY MR. ISRAEL: If it is contended here by the board of managers—

BY THE PRESIDING OFFICER: I am going to overrule the objection, Mr. Israel.

BY MR. ISRAEL: This man wrote a bond; it is immaterial whether or not he signed this application, and I think he has got a right to show what right he has—

BY MR. MANAGER EDGE: He has testified he did not see him sign it.

Q. Let us hear, Mr. Witness, where are you going to place yourself? Are you going to tell the Senate now that at the time you received this application you were satisfied it was John Schively's signature because of your then knowledge of other signatures of John

Schively's—purporting to be John Schively's signature—that you had seen before you saw the signature on the application; or are you going to take the position that you apparently first took, that at the time you saw this signature on the application it was a strange signature to you, but that you now know it was the signature by reason of what you have learned of his signature since that time. Now which is your position?

A. I want to take this position: that I have never seen John Schively sign his name. It was strange to me at that time because of the—for the same reason that I have given now, that I never had seen him sign it. But I had seen letters, coming from the insurance department at Olympia, with the signature of J. H. Schively attached thereto, and I recognized this or believed it to be the same signature as signed by the man who had written from the insurance department.

Q. Have you now any conscious recollection of the signature as an independent fact?

A. I have, because Mr. Schively has since identified his signature. Therefore, I know his signature when I see it now.

Q. You can go back and remember that signature as you saw it and get a mental picture of it in 1906 to compare with the identified signature of now?

BY MR. MANAGER EDGE: I object to that; it is repetition, if the court please. I think the question has been fully answered.

BY THE PRESIDING OFFICER: Where is that application?

BY MR. ISRAEL: We are going after it now.

BY MR. MANAGER EDGE: He has testified that he tried to get it and the insurance department refused to give it up.

Q. You sent it to Seattle?

A. Yes, sir.

Q. You don't pretend to tell this Senate that the body of it was not the handwriting of the bookkeeper?

A. No, I would not say that.

Q. You don't say upon your oath as a fact that you cannot be mistaken regarding that signature to that application—that it was the signature of John Schively; you qualify that?

A. I qualify it only in so far that I—

Q. You sent it to the Seattle office?

A. That is where it went.

Q. It went then to the general office?

A. Yes.

Q. You have corresponded regarding it?

A. Not to Seattle.

Q. Why haven't you made any attempt to get a hold of it?

A. I have attempted to get hold of it from the home office at Scranton, Pennsylvania.

Q. Did you find that it was there?

A. They refused to send the applications for all the bonds issued to the Pacific Live Stock Association.

Q. They refused to send them?

A. They refused to send them.

Q. Did you ask for a copy of it?

A. I asked for a copy. I asked for the original.

Q. Did you ask for a copy of the Schively bond?

A. Not particularly.

Q. You never have particularly asked for a copy of the Schively bond?

A. No; I asked for all of them, giving a list, names, etc.

Q. You have had charge of the prosecution of John Schively upon this charge of perjury?

A. Yes.

Q. You conducted the examination in the grand jury rooms?

A. Yes.

Q. You heard his testimony, in which he vehemently, for a day and a half, swore that he was on a salary of \$400.00 a month?

A. Yes, sir.

Q. You knew all of this time that you had taken his application, in which he had placed his salary on a commission?

A. Yes, sir.

Q. You knew that that document was in existence?

A. Yes, sir.

Q. You tried to get the original?

A. And I could not.

Q. You had made no attempt to get copies, to see what the answer to that question was?

A. I did not and could not.

Q. Wouldn't give you a copy of it?

A. They would not give me a copy.

Q. What reason did they assign?

A. Because they were afraid that, because of the work of the officers of the Pacific Live Stock Association, they might be liable on these bonds for malfeasance in office or for embezzlement.

Q. Have you that correspondence?

A. Not here. In fact, I was advised by the agent that the company would not give any information pertaining to the bonds issued to the Pacific Live Stock Association, because the receiver had made and would make a demand against the company for embezzlement.

Q. Did you state that fact to the managers at any time before now?

A. No, sir.

Q. Did they ever make any inquiry of you?

A. No, sir.

Q. When did they first learn that you would testify that such an application upon a commission basis for indemnity had been written by you?

BY MR. MANAGER EDGE: I object to that, if the court please, as immaterial.

BY MR. ISRAEL: Oh, it is very material, your honor.

BY MR. MANAGER EDGE: He is testifying to what he knows, not to what I know or any one else knows.

BY MR. ISRAEL: But I am going to find out.

[*Question read.*]

BY THE PRESIDING OFFICER: I think that is immaterial, unless you can show some reason.

BY MR. ISRAEL: Yes, I will state this reason for your honor: When this Senate adjourned over after the arraignment of John Schively, they promulgated a rule for the obtaining of depositions, and as well letters rogatory, whereby the Senate could go into any foreign state upon letters rogatory from this court of impeachment to any court of

record of any state and ask the court officers of that court to subpoena a witness before the court and take such testimony and exhibits from the witnesses as they saw fit. Now I want to know why these managers, upon the refusal of this company to produce this application, did not take their letters rogatory to Scranton, Pennsylvania, to get possession of a certified copy of it?

By THE PRESIDING OFFICER: I will hear from the other side.

By MR. MANAGER EDGE: Why, we don't have to do so unless we care to do it. Now, counsel is solicitous as to the method we are taking in proving this case. He can prove his side of the case just as he pleases. We believe that this method is sufficient, and he has no right to complain. We are putting in the evidence of the state at this time. If he thinks he needs that, he has the same right to take depositions or to have the testimony of any witnesses that he desires. He has no right to know why we have not done so and so. That is none of his affair. We are not proving his side of the case. This man has testified that he knows the contents sufficiently to testify to it. That is all we are offering at this time. We are not offering the application or anything else, and he has no right to inquire why we do not. As a matter of fact, he has testified why we do not, if it was material; and the counsel should not complain and should not insist on knowing why we don't do so and so. That is our side of the case.

By MR. ISRAEL: I am not asking why you did not. I am asking when they had information of the existence of this evidence?

By THE PRESIDING OFFICER: Counsel for the state has offered this witness and the witness has testified as to the contents of certain papers. I think it is fair for the other senators to know that and have him state. The objection is overruled.

Q. When did the board of managers or the attorney general's office know that you would testify to having seen such an application?

A. This morning.

Q. You never had informed them before?

A. No, sir.

Q. Was Mr. Edge a long number of days in Spokane looking up the testimony in this perjury case?

By MR. MANAGER EDGE: I object to that as immaterial. What I have done in this case is not a matter of evidence here. This witness has testified to what he knows. What I have done in this case is not a matter for this court, unless it becomes material, and it is not material what I have done or whether I have looked up the law. He might ask him what authorities I have read in this case and have the witness read them here to the Senate, or the different cases that might bear on this decision and it would be just as material.

[*Question read.*]

By MR. MANAGER EDGE: I will admit that I was, if you want me to.

By MR. ISRAEL: It is a matter of the credibility of the witness now, that he was with Mr. Edge day after day formulating this testimony, as deputy district attorney, and did not divulge to Mr. Edge this piece



of testimony that he had seen this commission application, where the man was being tried for perjury.

BY THE PRESIDING OFFICER: I think it is admissible, if he wants to test the credibility of this witness.

[*Question read.*]

A. I do not know.

Q. Did you see Mr. Edge while he was in Spokane?

A. I did.

Q. Did he talk to you about Mr. Schively in this case?

A. He did.

Q. Did he discuss this perjury charge with you?

A. Somewhat.

Q. Did he discuss the fact that you were to come over here as a witness?

A. He thought I might.

Q. And you did not in any of those discussions tell him of this piece of evidence that would tend to show that Schively was not telling the truth when he said he was on a salary?

A. No, for this reason: there were a great many things that I did not get an opportunity of discussing with Mr. Edge. I saw him but a few times and I was engaged in making an investigation of the county offices, and have been for five weeks.

Q. How long have you been in the city?

BY THE PRESIDING OFFICER: Mr. Irsael, how long will you be with this witness?

BY MR. ISRAEL: Some considerable time, your honor.

BY THE PRESIDING OFFICER: The court of impeachment will now resolve itself into the Senate.

At 11:55 a. m. the court took a recess until 1:30 this afternoon.

## AFTERNOON SESSION.

The Senate, sitting as a court of impeachment, convened at 1:30 p. m.

BY THE PRESIDENT: Senator Presby will take the chair.

BY THE PRESIDING OFFICER: The Senate is now in session as a court of impeachment. You may proceed with your examination, Mr. Israel.

[*Mr. Donovan recalled for further cross-examination.*]

BY MR. ISRAEL: Q. Mr. Donovan, since the recess at 12 o'clock have you made any effort to discover whether or not the files of the commissioner of insurance of the State of Washington contain any evidence or record of the fact that you were licensed by the insurance commissioner in 1906?

A. Yes.

Q. What did you find?

A. No record there, but, notwithstanding that fact, I have a license from the insurance commissioner.

Q. Where is it?

A. At my home in Spokane.

Q. Could you get it?

A. I will; yes.

Q. Now, while you could remember this morning that in the application you took for the bonding of John Schively the question had been answered regarding salary that he was on commission, you can't remember the name of the company that you were working for; can you remember it now?

A. Yes.

Q. What company was it?

A. The Title Guaranty & Surety Company.

Q. Of Pennsylvania?

A. Yes, sir; because that company has changed its name, during the time I was employed by it, and that is the reason why I didn't want to give, this morning, the exact title of the company.

Q. What was its title before it changed its name?

A. I can't answer.

Q. Did you tell this Senate that the Title Guaranty & Surety Company changed its name in 1906?

A. Yes, sir.

Q. About what time in the year?

A. While I was employed.

Q. Summer or spring of 1906?

A. Yes, sir.

Q. The Title Guaranty & Surety Company, of Scranton, Pennsylvania, changed its name?

A. Yes.

Q. But you can't remember what name it changed?

A. No, sir.

BY MR. MANAGER EDGE: Now, if the court please, we have had this witness on the stand for about an hour, and for the last three-quarters of an hour counsel has been examining about an application; if he continues at the rate he has been going, it will take two weeks to finish with this witness.

BY THE PRESIDING OFFICER: Avoid repetition, Mr. Israel. There is some new matter brought out here, however.

A. It was changed from the Title Guaranty & Trust Company to the Title Guaranty & Surety Company. It was while I was agent, but what day and what month and what week, I don't know. I know it was in the spring.

Q. You are familiar with this application for the purpose of soliciting applications to be signed by persons desiring insurance—the blank?

A. What do you mean by that?

[*Question repeated.*]

A. Generally.

Q. You were furnished with applications that came from the company?

A. Yes.

Q. How many pages did the blank consist of?

A. Well, Mr. Israel, that depends on the class of the bond. If it is a case for an attorney—an appeal bond—it is different from a case

for a surety bond. There were a great many bonds issued by that company, and they all had special blanks.

Q. Well, I am speaking of the special blank that was used in taking an application for a surety bond for an employee?

A. I think, two pages.

Q. Two pages?

A. Yes.

Q. Do you mean two pages or two leaves?

A. I mean two pages. I speak, I trust, with intelligence.

Q. Whereabouts was it, on the first or second page, that the question regarding the character of payment of salary occurred?

A. That appeared on the first page and went over on to the second.

Q. I am going to hand you a blank of the Title Guaranty & Surety Company, of Scranton, Pennsylvania—Surety Department, Fidelity Application—and ask you if that is a copy of the blank that the applicant filed with the company through you as agent in applying for insurance to that company?

A. That is an employee blank, as I understand it.

Q. Is that the blank we are referring to, that you used at that time?

A. As I told you here, there are several blanks; this may be one of them.

Q. You were familiar with those blanks at the time you were using them?

A. Yes.

Q. Does your recollection serve you that this present blank of that same company is the blank—is the same as the blank you were using at the time you took Schively's application?

A. You will please understand that the blank of the employer is entirely different from the blank of the employee.

Q. What blank is it you hold—an employer's blank or an employee's blank?

A. It is partially used by an employer and employee.

Q. How does that correspond with the character of blanks you used in the Schively application?

A. Well, you will find on the last page here, "What salary or compensation will you receive?" It goes over to the next page.

Q. Well, how does that blank compare, according to your recollection, with the blank you used that day?

A. Why, substantially the same. There may be some exceptions, but I wouldn't say now that there are. There might be some.

Q. I wish you to note that this application, according to the key number printed in the upper left hand corner, is "Form 548," of which 20,000, 20M., was issued on March 3, 1905.

A. Do you want an answer?

Q. Yes.

A. To what?

Q. That the blank was issued by the Title Guaranty & Surety Company. I ask you if that notation is at the top in the corner of that blank?

A. It is.

Q. If it is noted on this blank as put out by the Title Guaranty & Surety Company, "Form No. 548, Fidelity Application," was issued for use on March 3, 1905. Will you tell me why the blank is still in use by the Title Guaranty & Surety Company, if in 1906 the name Title Guaranty & Trust Company was first adopted?

A. Well, I can only say to you, Mr. Israel, this: that I don't know the policy of the Fidelity Surety Company in issuing these blanks. They may change their blank any day or any month. They can reform their forms at any time, and there is no criterion for the agent to follow concerning the applications issued by the company. Whether the blank was in force at the time I specified or not, I can't say; but I can say this, that they issued a blank which was signed by Mr. Schively, but whether or not he signed the exact form or not I can't say.

Q. If my ears hear aright, you testified a few moments ago that in 1906, while you were employed by what is now the Title Guaranty & Surety Company, it was operating under the name of The Title Guaranty & Trust Company, and that while you were so employed in 1906 it changed its name from the Title Guaranty & Trust Company to the Title Guaranty & Surety Company. You have made that statement, and I asked you as an insurance man how you account for the fact that the Title Guaranty & Surety Company—that the blank was issued in March, 1905, by the Title Guaranty & Surety Company, when their name was Title Guaranty & Trust Company and remained so until the next year?

A. I told you I did not know the exact date in which the company changed its name.

Q. You told me it was during your employment in 1906, didn't you?

A. Yes.

Q. This blank was put out in 1905, under the same title, wasn't it?

A. I don't know anything about that. I didn't see it published. It doesn't prove anything to me because they have a date on there, and furthermore, I will say this, that if it didn't change its name before I left, it was changed afterwards.

BY MR. ISRAEL: Mr. Secretary, I wish you would mark this as an Identification D, under Article 25.

[Marked "*Article 25, Defendant's Identification D.*"]

[Continuation of answer.] And I will call attention further, that the answers I made were these: that on the first page and the second page was where the question was asked as to the compensation; if not the same, the Senate may know.

Q. What the Senate wants to know, or the attorney for respondent wants to have the Senate know, or understand, is how, if in 1906 or subsequently, when you quit work, this company had been known as the Title Guaranty & Trust Company, and changed its name to the Title Guaranty & Surety Company, at any of those times, it could have put out a blank a year before you worked for the company, not under the title of the Title Guaranty & Trust Company, but the present name that you say was changed in 1906 to the Title Guaranty & Surety Company?

BY MR. MANAGER EDGE: Now, if the court please, he has gone over this about three times without objection, but I do object to its being gone over five or six times.

BY THE PRESIDING OFFICER: I think the subject has been exhausted and the witness has explained that.

BY THE WITNESS DONOVAN: I would like to explain that when I went to work for Messrs. Downs and Wheeler, they had a sign on Wall street, "Title Guaranty & Surety Company," or "Title Guaranty & Trust Company"—which, I don't know, but while I was in there they advised me the company had been changed. Now, when the company was

changed I don't know, but I understood from the information given to me that it was changed during the time I was employed by them. That is the reason why I can't give you at this time the time when the title of the company was changed.

By MR. ISRAEL: Q. Is that the reason you stated unqualifiedly under oath this morning that the name was changed during your employment with the company?

A. I didn't state unqualifiedly that the name was changed during my service, but I thought it was.

Q. You are willing to stand on the record as to what you did say?

A. I am willing to stand on the facts as far as I know.

Q. At the time you got the Schively application did you get an employer's statement with it?

A. Why, yes; the employer's blank was always furnished by some one connected with the company.

Q. Did you at the time you took the Schively application get an employer's statement?

By MR. MANAGER EDGE: I object to that as incompetent and immaterial. That has nothing to do with the application he did get. That is the only one we endeavored to prove anything about.

By THE PRESIDING OFFICER: The objection is overruled.

A. So far as I remember now, yes.

By MR. ISRAEL: Q. Why can you not remember that equally as well—the getting of one as well as the getting of the other?

A. Because the matter of employer's statements are matters of formality. The matter of application was a matter of detail. The matter of the application responded to the claim that the lawyer or the person who had charge of the application necessarily passed upon, and the liability of the man who made the application, and the matter of application of the employer's statement was a matter of formality which ordinarily followed in cases of that kind.

Q. You don't know whether you did or not, do you?

A. You heard my answer.

Q. You sent the application to the Seattle office?

A. I presume it was sent there, yes. I didn't have the technical work.

Q. All of the applications of this company of yours by its officers are sent to the Seattle office?

A. I don't know.

Q. Where were the policies written?

A. Some at Seattle and some at Scranton, Pennsylvania.

Q. Where was the Schively policy written?

A. I don't know. I couldn't testify as to that.

Q. Did the Seattle office write any policies where the compensation stated by the applicant was commission?

A. It wasn't a question with the Seattle office of writing policies covering applications for commission, but it depended upon the liability of the company.

Q. Well, that isn't exactly what I want to get at, Mr. Witness.

A. I can't answer you any better than that. Some of it was written in the home office.

Q. Let me see if I can make myself any plainer. Did the Seattle agent, upon application for a fidelity policy sent from your office in

Spokane, where the applicant was being remunerated and paid by commissions, write policies in Seattle?

A. Please read that question.

[*Question repeated by the stenographer.*]

A. Yes, sir.

Q. Now, do you want to make that statement qualifiedly or unqualifiedly?

A. Qualifiedly.

Q. How do you want to qualify it?

A. I want to qualify it by saying that all of our applications were sent to Seattle, so far as I know. I had no charge of the details. Where the policies came from, I don't know. Whether they came from Scranton, Pennsylvania, or Seattle, or San Francisco.

Q. Then you don't know, although you were agent, of any incident by which you can tell where any policy, where compensation was by commission, was written in Seattle? You don't know of a single incident as to where they were written?

A. What was that question?

[*Question repeated by the stenographer.*]

A. I can answer that in this way, without any discourtesy to the Senate—where policies are written: Some policies are written in a bonding company, written at Seattle, and some are written at the home office; some at a sub-agency; but as to where the policies were written in answer to your question, I could not state.

Q. Now, the senators are to understand that when you send in an application for a policy and you get the policy back there is nothing in the policy to indicate whether it was written at a sub-agency, or the general office, or at the head office.

A. Yes, sir—that is, if one is familiar with the local attorneys and the local officers of a sub-agency—but the agent has no knowledge—at least I did not have. It was not a question with me as to where the policies were written; it was a question of getting the business and getting the policies back, and as to where the policies were written, that did not occur to me at all.

Q. So you cannot say now where any of the policies which were applied for on a commission basis were written—whether at Seattle or at the home office?

A. I think some were written at Seattle.

Q. What makes you think so?

BY MR. MANAGER EDGE: I object to that question. I do not believe the Senate wants to know where the company wrote these policies.

BY THE PRESIDING OFFICER: It seems to me that the witness has not given a direct answer. If he knows, he should answer, and if he does not know, he should say so directly. I think that counsel for respondent is within his rights. It is a question of testing the memory of the witness on an important point, and goes to the veracity of the witness. It would save a great deal of time if he would answer directly. I think it is more the fault of the witness in not answering directly whether or not he knows or does not know of these facts. Proceed.

A. If the Senate will permit me, it is not my purpose to avoid answering any of these questions, or testifying as to the facts.

[*Question read.*]

BY THE PRESIDING OFFICER: Answer the question.

A. I cannot say where any policy was written.

Q. Why do you think that some were written in Seattle?

A. Well, some were signed by the agent over there, Mr. Parker.

Q. You knew who Mr. Parker was?

A. I do not know what his initials are.

Q. You knew who he was?

A. I only noticed his name would be signed on the policies.

Q. You knew he was an agent over at Seattle?

A. Not any further than that his name was signed to the policies.

Q. Then, how can you tell they were written in Seattle?

A. I presume they were written in Seattle—some of them were written in Seattle.

Q. You knew who Parker was?

A. I think I have answered that question.

Q. Now, I want to ask you this question: Do you not know as a solicitor of liability insurance that there is not a liability company in the United States that issues a policy on employee's liability where the compensation is on a commission basis, excepting from the general office.

BY MR. LEE: I object to that, because it is absolutely immaterial—

A. I can answer that. I am not speaking about liability insurance.

Q. Then, I will amend that; I will make it fidelity insurance?

A. I am not speaking of fidelity insurance. I am simply making this statement. I have not been testifying about liability insurance; I am talking about a bonding company.

Q. Do you know that there is not a bonding company doing business in the United States which would permit a policy to be issued by the company assuming any liability for an employee paid by commissions, excepting from the company's head office?

A. I will say in answer to this question—

Q. Answer this question.

A. I intend to.

BY MR. MANAGER EDGE: I think we have gone far enough with this. It does not make any difference where the company did write its policies. The witness has not testified that they wrote them all in the head office or in the other office. He testified where he thinks they were written, and he is not positive as to that. It does not make any difference whether they wrote them at the head office or any place else. He did not swear that they did write them at the home office, and he did not swear that they did not. I object to this as being entirely improper cross-examination and immaterial.

BY THE PRESIDING OFFICER: I think this has been carried far enough on this particular point. Let him answer this one question on this point, and then proceed with your examination on other matters, if you desire.

A. I know that liability companies write various kinds of policies, and whether or not they write all their policies through the general agent, or whether they are sent through their general agent, I do not know. When an application is made it is made through the general agent, and the policy comes back through the general agent, but whether the policy is written by the general agent or the home office I do not know.

Q. Then, from your revolved answer, I gather this to be your direct answer: That you do not know whether the invariable rule of every

bonding company in the United States is that a policy on a commission basis must be written in the home office?

A. I do not know that it is the invariable rule. I do not know that the rule is as you state.

Q. Can you state, or do you not know.

A. I cannot state that your statement is correct.

Q. Well, I will ask you this further question: [*Addressing chair*] Your honor, this is on an entirely different matter. Mr. Schively, at the time you bonded him was one of the officers in the main office of this insurance company, was he not?

A. I cannot answer that question, yes or no.

Q. He was purported to be?

A. He was purported to be a trustee.

Q. His application for a bond was as a trustee?

A. Yes.

Q. And on a commission basis?

A. Yes, sir.

Q. A trustee of the company itself in its main office?

A. Yes, sir.

Q. Do you not know that there is not a bonding company in the United States but what absolutely refuses to write any bond for any officer in the main office of the company who is reputed to be paid on a commission basis—that the answer that they are on a commission basis precludes a bond?

A. No, sir, I don't.

Q. You don't?

A. No, sir; and furthermore, the bonds have been written for this company all the time during its incumbency by the surety company—bonds on a commission basis—and the record will so show.

Q. You collected the premium on the Schively bond?

A. The premium on the Schively bond and all bonds due from the Pacific Live Stock Association have been paid, so far as I know.

Q. By whom?

A. By the company paying it to Downs and Wheeler, at the time I was with them, and when I left them to my successors.

Q. Paid by the company to the people for whom you work?

A. Yes, sir.

Q. Is that the way that the Schively bond was paid for?

A. I have answered that question, I think.

Q. Were you in here this morning when Mr. Hunter, the book-keeper, was on the stand?

A. Yes, I think I was. I was in and out.

Q. Did you hear his testimony?

A. Partially only.

Q. Did you hear that part of his testimony in which he was checking the charges that were made in the books against Mr. Schively?

A. Partially.

Q. Did you hear of any item charged against Mr. Schively by the company for the cost of his bond?

A. No, sir; and I think you will find from an examination of the journal and cash book that the charges for bonds were charged to the general expenses. That is my judgment.

Q. General expenses?

A. Or current expenses.



Q. You are quite familiar with the books? Did you have a great deal to do with them?

A. Well, I would not want to testify as an expert.

Q. You had the books in your possession a great length of time?

A. We had some of them, yes.

Q. You had them in your grand jury room?

A. Yes, some of them.

Q. You think that the items would be found, then, in the journal, some time along about the time that the bond was issued, in the current expenses?

A. I do not say I think. I say it may have been.

Q. Oh, you say it may have been. What was the first thing this year that caused you to remember that the bonding company had bonded J. H. Schively in 1906?

A. Well, the first thing that made me believe it was that is when I was placed in charge of the investigation of the Pacific Live Stock Association, and I made an investigation.

Q. That was about when?

A. January of this year.

Q. What first refreshed your recollection that such a bond had been applied for?

A. Well, I cannot say just what first refreshed my recollection, but I had a recollection from an examination of the applications.

Q. From an examination of what applications?

A. That I found in the office of Downs and Wheeler.

Q. Did you find any application there by Mr. Schively?

A. I found applications filed that I—yes, by Schively.

Q. What did you do with it?

A. I left it there.

Q. Was it a copy of that application that you had sent on?

A. It was.

Q. It is there now, is it?

A. I do not know.

Q. Did it purport to be the office file, a copy of the original?

A. I do not know.

Q. What did it purport to be?

A. Well, Downs and Wheeler had moved their offices twice, and the Downs and Wheeler company had lost the agency, and when I got to their office there were a large number of the applications missing, and I found a few, and some of them had been tampered with at that time, because this investigation had been suggested.

Q. Did you find the Schively application?

A. Yes, I did.

Q. And you did not take possession of it?

A. They would not permit me to.

Q. They have it now, presumably?

A. I do not know.

Q. Was their attention directed to it at that time?

A. The senior member of the firm, Mr. Downs, was away and I asked one of his employees to permit me to examine his records, and for that reason I did not ask him for this record.

Q. Did you call his attention to that fact, that you had discovered such a record?

A. No, sir, because Mr. Downs has been away most of the time since.

Q. Is there any one in the office who knows you found such a record there on that day?

A. No, sir; I do not think there is. No, sir; I know there is not, because I asked the boy in charge of the storage room to permit me to examine these records.

Q. This was at the time that this company was under an investigation?

A. Yes.

Q. [*Continuing*—as to these embezzlements?

A. Yes, sir.

Q. And this was at the time that you had Mr. Schively under investigation for his perjury?

A. No, sir; that was before the perjury.

Q. When you had him under his investigation for perjury and he testified that he never was on a commission basis, did you send for the application—that copy of the application?

A. To whom?

Q. To wherever you found it?

A. No, sir.

Q. Did you make any attempt to get it to show to the grand jury?

A. It was not necessary.

Q. Did you testify before the grand jury?

A. No, sir.

Q. Did you say anything to the grand jury about your knowledge that he was lying about commissions?

A. At the time—

BY MR. LEE: If the court please, there has been an indictment returned against Mr. Schively for perjury, and it does not make any difference whether he sent for this application slip or not. The grand jury certainly must have been satisfied that there was enough evidence without that. I object to this on the ground that it is immaterial and improper cross-examination.

BY THE PRESIDING OFFICER: I understand that the witness says that he discovered the copy of this application—a record of this application—and that his memory was refreshed by that, and his attention was called to the fact that Mr. Schively applied to his agency from that circumstance. I think that counsel has a right to question him in regard to that matter, as to whether that application is in existence.

BY MR. LEE: What difference does it make whether he was before the grand jury or not? That is the line of questioning now that we are objecting to. I would like a ruling upon that point.

BY MR. ISRAEL: I would like to have an opportunity to argue before you rule.

BY THE PRESIDING OFFICER: Very well, proceed; I will hear you.

BY MR. ISRAEL: This witness has testified that he was the one who conducted the investigation as a law officer before the grand jury that resulted in this perjury indictment. There are allegations in that perjury indictment stating that John Schively committed perjury by testifying that he was not paid upon a commission basis. He has stated that he exhibited the testimony before the grand jury that found that indictment—and the grand jury found that indictment upon Mr.

Schively's testimony before them. He comes in here this morning and testifies that he knew he was on a commission basis away back in 1906, and tells why. He further testifies that he never told it—not to a soul on earth—until this morning, when he told Mr. Edge for the first time. Now, the credibility of this witness is at stake as to whether he has stated the truth when he says that he ever saw such an application, and if the facts and circumstances can be developed here that are inconsistent, facts that are inconsistent with such a statement, and consistent—that make towards the truth—circumstances that establish that he does not state the truth when he says that he ever saw such application; all this is going to the credibility and to the weight of this witness' testimony, and I am showing circumstances that appeal to a fair mind as strange and mysterious, to say the least.

By MR. MANAGER EDGE: The witness testified this morning that he had not told the managers about it this morning, as I remember.

By MR. ISRAEL: Yes?

By MR. MANAGER EDGE: The counsel stated that he had testified that he had never made it known to any one, which I understand was not the testimony. Now, this testing the witness' credibility by a two hours' questioning, I think, is questioning it a little bit more than the endurance of the Senate or counsel in any ordinary trial at law would permit. The fact that this man, before the grand jury—

By THE PRESIDING OFFICER: I will sustain the objection to that question. I think it is a little far-fetched.

Q. You had Mr. Schively a day and a half before the grand jury?

A. No, sir; I think we had him in the morning session about two hours, and two hours and a half in the afternoon, and the next morning again about two hours.

Q. You during that time were using the utmost endeavor, with all the records before you, to make him testify that he was on a commission basis, were you not?

A. We were trying to find out from Mr. Schively on what basis he was, and whether or not he was on a commission basis, and whether these checks charged against him on his account were chargeable to him, or whether they were chargeable to some one else; to determine whether or not there had been embezzlement by the company, or by some other officer, or by Mr. Schively.

Q. And during that entire time Mr. Schively refused to say but that he was always on a salary, and stuck to that all the way through?

By THE PRESIDING OFFICER: Have you not gone over this once on cross-examination?

By MR. ISRAEL: No, sir; not on this phase of it.

By MR. LEE: He is just getting down to the merits of it now. The rest was all "chaff."

By THE PRESIDING OFFICER: Proceed.

By MR. ISRAEL: Read the question.

[Question read.]

A. Mr. Schively always swore that he was on a salary basis of four hundred dollars a month, and never had a commission of any kind.

Q. Among other things, he said to you, when you showed those figures to him, "Gentlemen, inconceivable as it may appear, from this multitude of figures I do not understand—I am still satisfied I never got that money or anything but four hundred dollars a month," didn't he?

A. No, sir.

Q. He didn't make a statement of that kind?

A. He made some assertion—he made an assertion that he was working under a salary of four hundred dollars a month, and that he never received anything from the company in commissions. When the question was asked of him, "Mr. Schively, what do you understand by this commission basis upon which you will receive your salary of certain months," he said "These things to me are inconceivable. I was on a salary. I never knew anything about a commission, and all I received was four hundred dollars a month."

Q. You were trying at that time to get at the truth?

A. We were trying to get at the truth.

Q. You were not trying to trap Mr. Schively, were you, into perjury?

A. No, sir; I never tried to trap him into perjury; but after the first morning he testified and came back again in the afternoon and testified; I sent for other witnesses for the purpose of determining whether or not the grand jury had been believing things or misunderstood things that Mr. Schively had testified to, and so we went over the same thing again and asked Mr. Schively the same questions.

Q. Well, but, Mr. Witness, as an officer of the court there, there never was a time from the beginning to the end but what you were more than willing to grant to John Schively, if he would only make it, an explanation, and to retreat from his claim that you considered was untrue—that he was on a salary basis?

A. Yes, always. I and Mr. Schively went out into the corridor during a recess, and I said to him, "Mr. Schively, I cannot understand your position in this case. You are either making yourself a damned knave, or damned fool, and so far as I am concerned, I cannot understand which it is."

Q. Did you state to John Schively that you were willing to protect him from any trap, that you had personal knowledge that in 1906 he had applied for a liability bond on a commission basis, and that you had lately discovered and had your mind refreshed by seeing a copy of his application?

BY MR. LEE: I object to that. It does not make any difference whether he did or not; he did not have to do it.

BY THE PRESIDING OFFICER: The objection will be sustained.

*Re-Direct Examination—*

BY MR. MANAGER EDGE: Q. Did Mr. Schively at any time during the time that he testified before your grand jury make any other statement whatever than the one which he made when he said that he had not made any agreement with Mr. Ward, had not signed any notes, had been paid a flat salary, and not a millage, and was not aware of the fact that any notes had been paid by the company and charged to him?

BY MR. ISRAEL: It would seem that counsel is taking advantage of the objection to this last question. It seems to me it is not redirect—

BY THE PRESIDING OFFICER: It is not.

BY MR. MANAGER EDGE: It is simply in explanation of his testimony. If the court considers it is not proper—

BY THE PRESIDING OFFICER: It is not redirect. You went into that in full in your main case.

BY MR. MANAGER EDGE: Very well, that is all, Mr. Donovan. We will call Mr. Schoen.

Mr. I. B. Schoen, a witness produced on behalf of the complainants herein, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: State your full name, please.

A. I. B. Schoen.

Q. Where do you live, Mr. Schoen?

A. Spokane, Washington.

Q. How long have you lived there?

A. A trifle over four years.

Q. Were you a member of the grand jury that was impaneled in Spokane county about March 10th of this year?

A. I was.

Q. Were you with that grand jury on or about the 20th day of April, at the time Mr. Schively was before it?

A. I was.

Q. Were you present during all the time that he gave his testimony?

A. I was.

Q. Prior to the time Mr. Schively testified before that body was any oath administered?

A. Yes, sir; there was.

Q. The same oath that is usually propounded to any witness before testifying in any court?

A. Yes, sir.

Q. State as nearly as you can what were the questions that were put to Mr. Schively and his answers in reference to an agreement or purported agreement which he had with Mr. E. R. Ward, by virtue of which he (Schively) became a member of the Pacific Live Stock Association? Tell what was asked as near as you can remember, and what was said.

A. The question was asked Mr. Schively if he had any arrangement whereby he was to buy out Mr. Ward, and his reply was that there was no arrangement.

Q. What were the questions and his answers to the same in reference to the execution of any notes to Mr. Ward?

A. He was asked the question if he had given any notes to Mr. Ward, and he replied that he had not.

Q. What did he say in reference to whether or not he had ever signed any?

A. He had no knowledge of signing any notes.

Q. What were the questions and answers in reference to the manner or basis of compensation he received?

A. He was asked how he was paid, or the manner of his compensation. He replied that he was on a salary of \$400.00 a month. He was asked also if he was on a commission basis, to which he replied that he was not; that he was on a flat salary of \$400.00 a month.

Q. What explanation did he make of the three checks payable to the Fidelity for \$400.00 each, if you recall?

A. He had no distinct recollection of that.

Q. Were you present when that copy of a statement upon which Mr. Schively had made some memoranda with pencil was presented to Mr. Schively?

A. The statement that was shown here this morning?

Q. Yes.

A. Perhaps I had better look at it.

Q. Do you recall that paper being presented to Mr. Schively? [Hands paper to witness.]

A. Yes, sir.

Q. Did he examine it?

A. He did.

Q. What did he testify to in reference to the notes that were payable to the bank, as appears on that statement, if you recall?

BY MR. ISRAEL: That is the \$400.00 item, you mean?

BY MR. MANAGER EDGE: Yes.

A. As I remember, he did not have any recollection of those charges.

*Cross-Examination—*

BY MR. ISRAEL: He persisted before the grand jury that he never received any of those items of \$400.00, didn't he?

A. He did.

Q. He was before the grand jury several hours, was he not?

A. He was.

Q. And he was persistent in his statement that no matter what those figures showed, he was on a flat salary of \$400.00 a month?

A. He did.

Q. And he was getting no commission?

A. Yes, sir.

Q. He did testify before the grand jury that he had brought Schrock and Ward together to make an arrangement for Ward to get out of the company?

A. That I don't remember.

Q. But he testified that he never made any deal with Ward to get out?

A. Yes, sir.

Q. And he never paid Ward anything to get out?

A. Yes, sir.

Q. And that he never gave Ward any notes to get out?

A. That he gave no notes.

Q. Do you remember he used an expression something like this: "Gentlemen, it may seem inconceivable to you with all this array of figures here, that I know nothing about it, but I want to still say that I never had any credits with that company excepting on a flat salary of \$400.00 per month"?

A. Yes, sir.

*Re-Direct Examination—*

BY MR. MANAGER EDGE: Q. Just one question I want to ask: Was Mr. Schively's attention called to the fact at that time that he had with pencil checked over that statement at some previous time?

A. Mr. Schively said that these were his figures.

Q. They were not made while in your grand jury room?

A. I think not. I think those were all there when these papers were presented to the grand jury.

BY MR. MANAGER EDGE: That is all. Will you be willing to excuse Mr. Schoen?

BY MR. ISRAEL: Yes, I will dismiss him.

William Kelly, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. State your name, please?

A. William Kelly.

Q. Where do you live, Mr. Kelly?

A. I live at Spokane.

Q. How long have you lived there?

A. Something over five years.

Q. Were you a member of the grand jury that was impaneled and was in session after March 10th of this year in Spokane county?

A. Yes, sir.

Q. Were you a member of that grand jury on or about April 20th, at the time J. H. Schively testified before it?

A. Yes, sir.

Q. Was there any oath administered to him prior to his giving any testimony there.

A. The customary oath that was given all witnesses.

Q. Did he make any objections to testifying before the grand jury?

A. None whatever.

Q. State as near as you can the questions propounded to Mr. Schively and the answers made with reference to the deal or purported deal between him and E. R. Ward, by virtue of which he became a member of the Live Stock Association?

A. Why, as near as I remember it, Mr. Schively was asked if he had—

Q. You will have to speak louder.

A. Well, I will try. As near as I can remember, Mr. Schively was asked if there was any agreement between him and Mr. Ward in regard to buying Mr. Ward's interest or millage in the company, and he said there was no such agreement.

Q. When asked in reference to having executed any notes and turning them over to Mr. Ward, what did he testify to?

A. He said he knew nothing of any notes.

Q. When asked whether or not the Live Stock Association had paid the bank \$1,200.00 to take up these notes charged to his account, what did he answer?

A. He said if this \$1,200.00 was charged to his account, he knew nothing of it.

Q. When asked with reference to the basis upon which his compensation was computed, what did he testify to?

A. He testified that he was working on a flat salary of \$400.00 a month.

Q. When asked as to whether or not he got any commissions, what were his answers—commissions or millage?

A. Why, I think—now let me see—his answer was that he received no millage whatever. It was upon a salary basis that he received compensation.

Q. Did your grand jury make any attempt to find the notes?

A. Well, I cannot say as to that—not to my personal knowledge. I

understood search had been made for them, but I would not say of my own personal knowledge that it had.

BY MR. MANAGER EDGE: You may cross-examine.

BY MR. ISRAEL: No questions.

BY MR. LEE: Mr. Israel, do you desire the witness any more?

BY MR. ISRAEL: No.

BY THE PRESIDING OFFICER: The witness is excused.

J. B. Schrock, recalled for further direct examination, testified as follows:

BY MR. MANAGER EDGE: Q. Mr. Schrock, you probably heard some testimony or some statements here this morning in reference to the time that Schively finally settled up with the company and the account was balanced off. At the time settlement was made, was he settled with on a basis of a flat salary of \$400.00 a month or upon the same millage basis by virtue of which he went in?

A. He was settled with on a commission basis.

Q. And not on any salary basis?

A. Not to my knowledge.

*Cross-Examination—*

BY MR. ISRAEL: Q. You knew Mr. Schively withdrew from the company on the 8th day of October, 1906?

A. I think that was the date; yes, sir.

Q. He came to you on that day and stated that he wanted to get settled up with the company, because on the following day, in company with Mr. Ligget, the Idaho insurance commissioner, he was going to examine a company in Spokane, and he desired at the time he made the examination in the aid of Mr. Ligget to be entirely free of any connection with any insurance company?

[*Question read.*]

A. Yes, sir.

Q. You remember that?

A. I remember it.

Q. At that time you gave him the check for \$269.50, on the 8th day of October?

A. I think that was the amount; yes, sir.

Q. On the 9th or 10th Mr. Schively, on his way to the train, came into your company's office while the board was having a session and met you in the outer office, at which time you gave him this statement that is here in evidence which is scratched over with pencil; have you seen it?

A. I have seen the statement.

Q. Do you know what it is?

A. Yes, sir.

Q. At that time you gave it to him; do you remember that?

A. That may be; I would not be positive, but then that may be.

Q. Well, let me refresh your recollection a little further. At that time you said to him, "Schively, the books show that, instead of the company owing you, you owe the company." Do you remember that?

A. That is a fact.

Q. And he said to you, "Let me see those books"; and you gave him this statement. Now, do you remember it?

A. That is a fact.



Q. And you and he, after you figured a little while, both went in before the board, didn't you?

A. I think so.

Q. And there he made an explanation, undertook to make an explanation of the figures he had in his hand to explain that the company and himself were even, and he made an explanation and you agreed to the explanation, and Mr. Bennington got up and said, "I was satisfied all the time this man was all right"; you remember that, don't you?

A. Something like that.

Q. And you all shook hands and Schively left; you remember that, don't you?

A. I do.

Q. And that was the last of Mr. Schively?

A. I think it was.

Q. Now then, going back to the 8th, or before Mr. Schively came in on the night of the 10th, when they were holding the board meeting, or the night of the 9th, whichever one it happened to be, there had been a discussion going on in the board meeting about this Schively account, hadn't there?

A. Yes, sir.

Q. And certain figures were there on the board table among the members, were there not, showing that Schively owed the company \$400.00; that is true, is it?

A. Something to that effect; yes, sir.

Q. And when you came out in the office and met Schively, who was coming in to say good-bye, you told him that the books showed that he owed the company; and he immediately demanded the books, and you brought him out of the board meeting this piece of paper. After you and he had made comparisons in the corner or in the main office, you and he went back in with the figures, didn't you, at the time the explanation was made?

A. Something of that kind; yes, sir.

Q. Now, on the 8th day of October, when John Schively ceased to be a member of your company and you paid him the \$269.50 to balance his account, you settled with him from his memoranda of what sums he had drawn—the small balance between yourself and himself, the advance that he had made that morning to an employee for stamps—on a basis of \$400.00 a month, as had been agreed between you and him that he should draw, didn't you?

[*Question read.*]

A. No, it was this way: That statement that Mr. Hunter had made of the account, showing the way the books stood, or Mr. Schively's account stood on the books, is the statement that I settled with him, but I don't know just how Mr. Schively had figured. He may have figured on the \$400.00 flat salary, but I figured just the way the books stood.

Q. But you did pay him at that time a balance of \$260.50, didn't you?

A. Yes, sir.

Q. To square his account?

A. Yes, sir.

Q. Now, Mr. Schrock, if the books, as they afterwards appeared with the commission accounts, were his proper credits and the withdrawals and the Hunter notes were proper charges at the very time that you gave him \$260.50 to settle in full, the books showed that he owed the company \$700.00, didn't they?

A. I am sure I don't know as to that.

Q. You never have examined to see, never have looked that up?

A. No, I have the bookkeeper's word for it.

Q. At that time?

A. And the account.

Q. At that time?

A. Yes, sir.

Q. According to the bookkeeper's word and the account at that time, you owed John Schively \$260.50?

A. Yes, sir.

Q. And you paid it to him?

A. And we paid it.

Q. Which bookkeeper was that?

A. That bookkeeper was Hunter.

Q. This man that has been upon the stand?

A. Yes, sir.

Q. And he stated at that time that to balance the final account Schively would have to be paid \$260.50?

A. That is the statement.

Q. That he made to you?

A. That he made.

Q. And that is the reason you gave the money?

A. That is the reason I gave the money.

*Re-Direct Examination—*

BY MR. MANAGER EDGE: Q. When did this company go into the hands of a receiver finally, Mr. Schrock?

A. The first or second time?

Q. Well, I may state this is in explanation of article 24, for the benefit of the Senate. How many times did it go into the hands of a receiver?

A. Well, they tried it a couple of times.

Q. When was the first time they tried it?

A. I think the 26th day of April, if I am not mistaken.

Q. What year?

A. Excuse me, it was the 26th day of February.

Q. Following the October when Schively went out?

A. 1907.

Q. Were they successful in getting it into the hands of a receiver then?

A. Yes, for a short time.

Q. What became of it then; was it taken from the receiver?

A. It was.

Q. And when did it next go into the hands of a receiver?

A. Some time the fore part of July, 1907.

Q. It stayed there after that, didn't it?

A. Yes, sir.

Q. Has not been out since?

A. Not to my knowledge.

BY MR. ISRAEL: You are still working on article 25, are you?

BY MR. MANAGER EDGE: No, on article 24. It recites when this company went into the hands of a receiver, simply more as formal proof than otherwise. That is all.

*Re-Cross-Examination—*

BY MR. ISRAEL: Q. Now, Mr. Schrock, probably this is cross-examining you as to the same matter of the receivership. Your company was first put into the hands of a receiver by Judge Whitson of the United States court; when was that?

A. Some time the latter part of February, 1907.

Q. Judge Whitson subsequently held that he had no jurisdiction in the matter and he turned everything back to your company?

A. He did.

Q. And you went on operating at that time?

A. We did.

Q. At that time there was an application to the superior court for a receiver, charging that you were insolvent, and you were hailed into the superior court; and after the superior court had heard the evidence, the superior court refused to grant a receiver; that is true, isn't it?

A. That is true.

Q. When was that, do you remember?

A. Well, it was right after it was dismissed from the —

Q. Some time along in March?

A. Yes, sir.

Q. Now, you were in a solvent condition at that time?

A. We were.

Q. Now, when was the receiver finally appointed?

A. Some time in July, the following July.

Q. And when you went into the hands of a receiver in July, you were just as solvent, so far as your assets were concerned, but you lacked your ready money; that was the situation, wasn't it?

A. Yes, sir; that was the situation.

Q. Because you could not get somebody to tide over your farmers' notes for the season, you were forced into liquidation?

A. That was it.

Q. The season before you had been tided over the farmers' season by loan?

A. Yes, sir.

Q. Your company was really solvent when it went into the hands of the receiver the last time?

A. It certainly was.

BY MR. ISRAEL: That is all.

[Witness excused.]

BY THE PRESIDING OFFICER: We will take a recess for ten minutes.

BY MR. MANAGER EDGE: I think now in closing the case (the ledger, I understand, is already in evidence with the account), I will offer in evidence the cash book and journal, so that in case the senators desire to, they can check through them and see that the items have been properly given, and also the stubs.

BY THE PRESIDING OFFICER: Do you wish to specify what particular part of the book is in evidence?

BY MR. MANAGER EDGE: Well, that would be a little difficult.

BY THE PRESIDING OFFICER: Any objection, Mr. Israel?

BY MR. ISRAEL: No objection to these that have been offered.

BY MR. MANAGER EDGE: There is the journal, cash book, and I also desire to offer in evidence the minute book which has been heretofore identified but is not formally in evidence. I desire that to go in as to

the two meetings that were testified to. I will designate now the ones to be introduced—the ledger, journal, cash book, and the minute book. The stubs, I understand, have been admitted heretofore.

By MR. ISRAEL: Let everything go in as an entirety.

By MR. MANAGER EDGE: Everything in these books then that is material will be offered.

E. R. Ward, being a witness recalled on behalf of the state, testified as follows:

*Direct Examination—*

By MR. MANAGER EDGE: Q. Mr. Ward, at the time you had the arrangement with Mr. Schively which has been testified to, was there any agreement between you and the Live Stock Company by which they should sign these notes with Mr. Schively?

A. There was absolutely no agreement on the part of the officers of the Live Stock Company to sign or stand good for these notes that Mr. Schively gave me. I was dealing with Mr. Schively, but I asked Mr. Schrock and the other officers to see that these notes were paid out of Mr. Schively's commissions that would come to him.

Q. If Mr. Schively failed to pay the notes, did you intend to hold the company?

By MR. ISRAEL: Now, if the court please, I object to that.

By THE PRESIDING OFFICER: That is a conclusion. The objection is sustained.

By MR. MANAGER EDGE: If the company did put its stamp on them or in any way sign or indorse them, did they do so at your request?

A. No, sir; it was not.

*Cross-Examination—*

By MR. ISRAEL: Q. Mr. Ward, you have already testified, have you not, that the company did not, or any one else but John Schively, sign those notes?

A. To the best of my recollection, there were no others.

Q. Did you hear your wife's testimony?

A. Only a part of it.

Q. Are you aware that she testified that you brought the notes to her and she had them in her possession and looked them over and told you to take them to the bank, and there was no signature on them but John Schively's?

A. I didn't hear all of her testimony.

By MR. ISRAEL: That is all, sir.

Mr. Donovan, being a witness recalled on behalf of the state, testified as follows:

*Direct Examination—*

By MR. MANAGER EDGE: Q. Mr. Donovan, did you make any attempt to secure these notes or find them during the investigation conducted by the grand jury?

A. I did.

By THE PRESIDING OFFICER: Didn't you go into that before, Mr. Edge?

By MR. MANAGER EDGE: I don't believe I did. I don't recall that I did.

BY THE PRESIDING OFFICER: Go ahead then.

BY MR. ISRAEL: I did on cross-examination.

BY MR. DONOVAN: I beg your pardon, Mr. Israel, but I did not—

BY MR. ISRAEL: Let the question go.

BY MR. MANAGER EDGE: Q. State briefly what search you made, Mr. Donovan.

A. I asked the receiver for these notes, and he said he did not have them. I asked Mr. Schrock for these notes and he said he did not have them. I asked Mr. Schively, at Spokane, and he said he did not have them; that he had never seen them. I asked Mr. Ward for the notes and he said he did not have them. I asked every officer of the company for the notes and they said they did not have them.

Q. You realized that it was very important that the notes should be gotten?

A. I wanted to secure them, if possible, in the investigation by the grand jury, and I made the investigation of every paper and every voucher and every receipt and every check in the possession of the receiver of the Pacific Live Stock Association, and these notes were not among the papers. I have been unable to secure them from any source whatsoever.

*Cross-Examination—*

BY MR. ISRAEL: Q. Did you ask Charles Murray, the first receiver?

A. I think I did.

Q. Did he say to you that they at one time had been in his possession?

A. My impression is that he said that they had never been in his possession. He referred me to E. C. McDonald, the attorney for J. H. Schively.

Q. Did you see Mr. McDonald?

A. I saw Mr. McDonald, and my impression is that he told me that he had never seen the notes.

Q. Didn't Mr. McDonald tell you that Schrock had brought the notes to his office at the request of Schively after Charles Murray had been discharged as receiver; that he (McDonald) had looked at them and gave them back to Schrock?

A. He never told me any such thing.

Q. You never knew that?

A. No, sir.

Q. Did you ask Mr. Bennington whether they had ever been surrendered by Schrock to him?

A. I never talked to Mr. Bennington.

Q. About the matter?

A. About this matter or any other matter.

Q. Mr. Bennington was the man who took the books, papers and vouchers as the second receiver from Schrock?

A. Bennington?

Q. Ganby, I should have said.

A. Oh, Ganby.

Q. Let us change the name; it is my mistake.

A. Well, Ganby told me that he had never seen the notes.

Q. They had never been surrendered by Mr. Schrock to him?

A. No.

Q. Did you by any method discover or satisfy yourself that the notes had ever been in the possession of Schrock?

A. Only from the testimony of Mr. Schrock before the grand jury,

and the private conversation I had with him, both to the effect that he never had seen the notes after they were signed by Mr. Schively?

Q. Mr. Schrock told you that he had never seen the notes since they were signed by Mr. Schively and turned over to Mr. Ward?

A. He said that after they were signed by Mr. Schively and turned over to Ward they went to the Fidelity National Bank, and that after they went to the bank he never had come in contact with the notes.

Q. Never had seen them, I thought you said a moment ago?

A. Well, I will withdraw the word seen, and state that he had never come in contact with them, and to emphasize that I will say that he had never seen the notes; that the notes were not given by the Pacific Live Stock Association; that they were notes of Mr. Schively, and that he had never come in contact with them as an officer of the Pacific Live Stock Association.

Q. That is what Schrock told you?

A. Yes, sir.

[*Witness excused.*]

BY MR. MANAGER EDGE: As to article 24, here is a letter which is admitted in the answer of the respondent to have been written, and if there is no objection we will admit it without proof, or we can prove the signatures.

BY MR. ISRAEL: Yes, sir; we admit it.

BY MR. MANAGER EDGE: You may mark that the next exhibit under article 24, and read it.

[*Marked "Article 24, Complainants' Exhibit No. 4."*]

BY MR. MANAGER EDGE: Now, there is an allegation under article 24 that during the time that Mr. Schively was president or connected with the Pacific Live Stock Company, that he drew his salary as deputy insurance commissioner. That, I think, is admitted in the answer; I am not certain; if not, we can prove it.

BY THE PRESIDING OFFICER: That is denied.

BY MR. MANAGER EDGE: Well, it will be necessary in order to prove article 24 to prove that he received his salary from the state during those three months. It will be necessary to prove that. That he did receive the money, I think, there is no question, but if respondents insist on our proving it, we will call the deputy state auditor to prove the warrants were issued.

BY MR. ISRAEL: Let us have the proof.

BY MR. MANAGER EDGE: I would like the chair to instruct the sergeant-at-arms or some proper authority to direct the state auditor to appear here and produce his warrant book or other record by which he ascertains the disbursements for the state officers covering the months of July, August, September, and October, 1906, and the canceled warrants returned on that date from respondent. This is the last portion of the proof on that article. If the court desires to proceed with other articles which were not proven the other day, and will admit this, I will go to the auditor's office and procure the necessary records myself, so it will not be necessary to delay the court. I assumed that it was a fact and that we would not be required to prove it.

BY THE PRESIDING OFFICER: You may get the records.

By MR. LEE: Now, if it please the court, while Mr. Edge has gone after this record, we might as well proceed with the trial.

By THE PRESIDING OFFICER: You may proceed.

By MR. LEE: We will call Mr. Tebben. This is proof in support of article 22, which reads as follows:

"That on April 7th, 1908, said J. H. Schively, as deputy insurance commissioner, examined the books, records and securities of the Falls City Fire Insurance Company, of Spokane, Washington; that the time spent in making said examination was a few hours; that said Schively demanded of and received from said company the arbitrary sum of fifty dollars to cover expenses incurred in making said examination, which said sum was greatly in excess of his expenses incurred in making said examination; that no detailed or itemized statement or list of expenses was furnished to the company by said Schively, as by law required"—together with the usual wherefore clause.

Fred Tebben, being a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination by Mr. Lee—*

Q. State your full name.

A. Fred Tebben.

Q. And your residence.

A. Spokane, Washington.

Q. Were you on April 7th, 1908, or at any other time, identified with the Falls City Fire Insurance Company, of Spokane, Washington?

A. I was.

Q. In what capacity?

A. Secretary.

Q. State to the Senate whether J. H. Schively, as deputy insurance commissioner, appeared in your office on or about April 7th, 1908, and if so, for what purpose.

A. He appeared in our office about April 7th for the purpose of examining the securities of the company.

Q. State how long, if at all, he remained in your office?

A. I could not say exactly, but several hours, I should say.

Q. Did he say anything about what his usual charge was for making an examination—how much a day, or anything of the sort?

A. No, sir.

Q. What, if anything, did he say about the compensation for that examination?

A. He made a charge of \$50.

Q. Did he at that time, or at any subsequent time, present any detailed statement of his expenses?

A. No, sir.

Q. What examination, if any, was made at that time?

A. He went through the securities of the company.

Q. Anything else?

A. I believe not.

Q. That was the first time that the company had been examined?

A. Yes, sir, except at the time when the company's license was originally issued.

Q. Now, Mr. Tebben, you are familiar with the living expenses in Spokane at that time?

A. Yes, sir.

Q. State to the Senate approximately what the expense—actual, necessary expense—would be in making a trip from Olympia, Washington, to Spokane, Washington, spending one day in Spokane, and returning to Olympia?

A. I would say \$40.00, about.

*Cross-Examination—*

BY MR. ISRAEL: Q. You would not consider \$50.00 excessive?

A. No, sir; I would not.

Q. You were perfectly satisfied with his examination?

A. Yes, sir.

Q. It was not a perfunctory examination; it was for the purpose of ascertaining just how you stood?

A. I believe so.

Q. It was satisfactory to you?

A. Yes, sir.

Q. You did not ask for any detailed statement?

A. No, sir; we did not.

Q. You considered \$50.00 no more than what the actual expenses of such a trip would be.

BY MR. LEE: Read the question, so that he will understand.

A. I do not believe that a charge of \$50.00 would be excessive for an examination of that kind.

Q. And you don't believe so now?

A. I don't.

BY MR. ISRAEL: That is all.

*Re-Direct Examination—*

BY MR. LEE: Q. State to the Senate what the railroad fare is from Spokane to Olympia.

A. I do not know; I will have to figure that out. [*Witness begins to figure.*]

BY MR. ISRAEL: If the court please, this seems to me a cross-examination of his own witness. In the interest of haste, I am going to object to this as not redirect examination.

BY THE PRESIDING OFFICER: Is not this along the line of cross-examination of your own witness?

BY MR. LEE: No, sir, I will withdraw the question. I will form it this way: You testified on cross-examination you did not think this was excessive. Take a suppositions case: Suppose the actual and necessary traveling expenses from Spokane to Olympia and return, spending one day in Spokane, would be forty dollars, what would you say to a fifty dollar charge?

A. I would pay it.

Q. You would pay it because the deputy insurance commissioner asked you to pay it?

A. Why, yes.



*Re-Cross-Examination—*

By MR. ISRAEL: Q. When you say forty dollars for a round trip from Olympia to Spokane, that would be an ordinary estimate, if you did not figure it?

A. Yes, sir, it would.

Q. If a man would take a section on a sleeper, and stop at your best hostelry at Spokane, with a room and bath, and board at your best restaurants while he was there, fifty dollars then would not more than cover the trip?

A. [Witness figures.] The way I figured it, the railroad fare and two meals on the train both ways would amount to about \$35.00. The railroad fare and the sleeper fare from Spokane to Olympia would be \$15.15 each way. That would make \$30.30. Two meals on the train each way, they would cost at the very least two dollars and a half. That would be five dollars, and that would make about \$35.00 without the hotel expenses and meals at Spokane.

Q. That would be without the board and room at Spokane?

*Re-Re-Direct Examination—*

By MR. LEE: Q. The fact remains that there was no itemized statement of expense presented, does it not?

A. Yes, sir.

[Witness excused.]

By MR. LEE: We will call Mr. Lebo. Mr. Lebo's testimony is in reference to article 2, which is as follows: "That in January, 1908, the said J. H. Schively, as deputy insurance commissioner, represented to Charles S. Lebo that the cost of admission of insurance companies to the State of Washington was two hundred and thirty-five dollars each; that Charles S. Lebo came to Olympia, Washington, in March, 1908, and sought to admit the Commercial Fire Insurance Company of Texas, and the Southern National Fire Insurance Company, of Texas, to do business in the state. That the said Schively thereupon represented to the said Lebo that the entrance fee would be two hundred and thirty-five dollars for each company; that said Lebo stated that he could not pay that amount, whereupon the said Schively arranged to admit these two companies, and did admit these two companies, in March, 1908, upon the payment of the following fees: \$137.00 for the Commercial Fire Insurance Company and \$37.00 for the Southern National Fire Insurance Company; the said Schively at the time stating to the said Lebo that he could pay the balance of three hundred dollars to cover examination fees as soon as he was able to do so"—and the usual wherefore clause.

Charles S. Lebo, a witness produced on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination—*

By MR. LEE: Q. State your full name, please.

A. Charles S. Lebo.

Q. Mr. Lebo, have you ever been identified with the Commercial

Fire Insurance Company, of Texas, and the Southern National Fire Insurance Company, of Texas?

A. I have.

Q. State to the Senate, Mr. Lebo, whether or not you ever had any correspondence with the insurance department of this state, and if so, with what representative of that department, with reference to the admission of these two companies?

A. I wrote to Mr. Schively, the deputy insurance commissioner, with reference to getting the companies admitted into the State of Washington.

Q. Where were you at the time you wrote that letter?

A. Chicago.

Q. I will ask you to examine this letter and state if you ever saw it before, and if it was received by you? [*Handing witness letter.*]

A. [*Examining letter.*] It was.

Q. State if it was received by you in response to your inquiry?

A. It was.

BY MR. LEE: We will offer this in evidence.

BY MR. ISRAEL: [*After examining.*] No objection.

BY THE PRESIDING OFFICER: It may be admitted.

[*Document marked, "Article 2, Complainants' Exhibit No. 1."*]

BY MR. LEE: Secretary, will you please read this.

BY THE SECRETARY: "The State of Washington, department of insurance, Olympia, January 25, 1908. Mr. Charles S. Lebo, Illinois Athletic Club, Chicago, Illinois—Dear Sir: Under separate cover, I forward you all blanks required to be executed and circular containing information required in seeking admission to do business in this state. The total costs of admission are two hundred and thirty-five dollars—thirty-five dollars statutory entrance fees and two hundred dollars for the verification of securities and first report, all of which must be paid in advance. Very truly yours, (Signed) J. H. Schively, deputy insurance commissioner."

Q. Now, after receipt of this letter, state to the Senate what transactions or dealings, if any, you had with the insurance department of this state in person.

A. I came to Olympia, I think it was about March the 1st, with the statement of the Southern National and the Commercial Fire Insurance Company, and I presented them to Mr. Schively, and also told him that I wanted the companies admitted to the state. He told me it would cost me the regular \$35.00 statutory fee for each company and two dollar agent's license to start with, that being my own license, and two hundred dollars for examination—for examining each company. I told him the two hundred dollars would have to be borne by myself, and as it was a little more than I had at the time, as I did not have much working capital—not as much as I ought to have to do business with. He told me that if I would pay him one hundred dollars, it would be satisfactory; that I could pay with the understanding that I was to pay the other \$300.00 as soon as I could.

Q. Then proceed and tell us what, if anything else, was said or done at that time.

A. Mr. Schively accepted the statements on that basis.

Q. State whether or not the money was paid, if at all, and if so, what amount, and state whether or not any certificates were issued then and there.

A. I paid Mr. Schively \$100.00 for examination fees on account and

\$37.00 for statutory fees for each company, \$74.00 in all, and he issued the licenses to both companies.

Q. State whether you know of any examination having been made at that time or subsequently?

A. There was never an examination of the companies at any time.

Q. State whether any other transaction was had with Mr. Schively with regard to this money and these companies.

A. Later on, I think it was in November, I resigned from the companies, because they were too small to do business up here in this country. They were all right in their own sections of the country. I lost considerable money, and when I resigned I notified Mr. Schively I had resigned the general agency, and since he had not made the examination, I wanted this money back; and he said, if I am not mistaken, in a letter—

BY MR. ISRAEL: Where is that letter?

Q. Examine this and see if the letter you are referring to is in there?

A. The letter here, dated May 18th, is in answer to the letter I wrote to Mr. Schively telling him that I had been unable to take care of his \$300.00, and this letter is the one that he answered. [*Indicating. Mr. Lee hands letter to Mr. Israel for inspection.*]

BY MR. LEE: I will offer this in evidence.

BY THE PRESIDING OFFICER: Any objections?

BY MR. ISRAEL: No objections.

[*Letter marked "Article 2, Complainants' Exhibit No. 2."*]

BY MR. LEE: Will you please read that exhibit, Mr. Secretary.

BY THE SECRETARY: "The State of Washington, department of insurance, Olympia, May 18th, 1908. Charles S. Lebo, insurance manager, 208 The Rookery, Spokane, Washington—My dear Mr. Lebo: I have just returned to my desk this morning. In answer to yours of April 27th, I beg to state that you are worrying unnecessarily over your indebtedness. I am in no hurry and am satisfied as to your honesty. When it is convenient to yourself, you can send the money and not before. Do not give it a moment's worry until you are ready to send it. Sincerely yours, (Signed) J. H. Schively, deputy insurance commissioner."

Q. State whether or not you had any correspondence with Mr. Schively relative to the return of this money?\*

A. I did.

Q. Examine this letter and state whether or not it is the letter received by you from Mr. Schively.

A. [*Examining letter.*] That is the letter.

BY MR. LEE: I will offer this in evidence.

BY MR. ISRAEL: No objection.

BY THE PRESIDING OFFICER: It may be admitted.

[*Letter marked "Article 2, Complainant's Exhibit No. 3."*]

BY MR. LEE: Please read that, Mr. Secretary.

BY THE SECRETARY: "The State of Washington, department of insurance, Olympia, November 7th, 1908. Mr. Charles S. Lebo, 208 The Rookery, Spokane, Washington—Dear Sir: I beg to acknowledge receipt of yours of November 6th. Money paid to the insurance department for examination or any other account cannot be returned. When the department examines the Southern National and Commer-

cial I shall endeavor to protect you in this by charging the full amount and then returning the same to you. That, however, is a doubtful policy and difficult of realization. The department cannot be held responsible for your resigning the companies which were introduced into the state by you. Very truly yours, (Signed) J. H. Schively, deputy insurance commissioner."

Q. State whether or not you ever received a return on this money?

A. I instructed my attorney in Spokane to write to Mr. Schively with reference to this and see if he couldn't secure the money, and after considerable correspondence, the attorney asked me for the original receipts I had, stating that—

By MR. ISRAEL: Just one moment. We don't care what his attorney said.

By MR. LEE: That is right, Mr. Lebo. Do not state anything that your attorney said or what somebody else told you. State whether the receipts you received from Mr. Schively as deputy insurance commissioner covering these items were returned to Mr. Schively?

A. They were.

Q. State whether or not, to the Senate, prior to their return, a copy of these receipts was made by you or under your supervision?

A. There was.

Q. Examine that photographic copy and state whether or not that photograph is made of that receipt?

A. Yes.

By MR. LEE: We will offer this in evidence.

By MR. ISRAEL: No objection.

By THE PRESIDING OFFICER: It may be admitted.

[*Photograph marked "Article 2, Complainants' Exhibit No. 4."*]

By MR. LEE: Will you please read that, Mr. Secretary.

By THE SECRETARY:

No. 1522. \$137.

#### INSURANCE DEPARTMENT, STATE OF WASHINGTON.

OLYMPIA, WASHINGTON, March 6, 1908.

Received from Commercial Fire Insurance Co. \$137; account entrance fees \$35, one license \$2, part payment on examination \$100.

J. H. SCHIVELY, *Deputy Insurance Commissioner.*

No. 1628. Original. \$137.

#### INSURANCE DEPARTMENT, STATE OF WASHINGTON.

OLYMPIA, WASH., March 13, 1908.

Received from Southern National Insurance Co. \$37; account entrance fee \$35, one license \$2.

J. H. SCHIVELY, *Deputy Insurance Commissioner.*

A. After the return of these receipts, state whether or not the money was returned?

A. It was.

Q. State to this Senate whether or not when you made application for the admission of these companies in Mr. Schively's office and had this conversation with Mr. Schively—state what the representations were that were made to you regarding the entrance fee to this state?

A. As I understood it, the \$35 was for statutory admission fees, \$2

for license, and \$200 for expenses for examination of each of the companies.

Q. When did you understand from Mr. Schively this examination was to occur?

A. He did not say.

*Cross-Examination—*

BY MR. ISRAEL: Q. Hand the witness the first exhibit, will you, please?

[*Secretary hands witness Exhibit No. 1.*]

Q. You do not mean to say that was a letter sent by Mr. Schively, or a letter you received with Mr. Schively's name signed to it?

A. No, sir.

Q. That is not Mr. Schively's signature?

A. No, sir, from the way it looks it is not.

Q. But it is his name?

A. Yes, that is Mr. Schively's name.

Q. Evidently written by some one else?

A. Yes, because here is an initial under it.

Q. What initial is under it?

A. Y, from the looks of it.

Q. You personally knew Mr. Schively?

A. Yes.

Q. And you personally knew Mr. Nichols?

A. Yes, sir.

Q. You have met both gentlemen in St. Paul, when they were on an examination tour?

A. In Minneapolis.

Q. When you had the talk with Mr. Schively regarding the payment of the money to cover the examination fees of those two companies and you told him that you were not prepared to pay so large a sum at that time, he said to you that he would take the matter up with his chief?

A. Yes.

Q. And he retired into Mr. Nichols' room and saw Mr. Nichols about it?

A. Yes, sir.

Q. He saw Mr. Nichols, and came back and said it was all right?

A. Yes, sir.

Q. That you could pay \$100 and put up the other money when it was convenient, before the examinations were made?

A. Yes, sir.

Q. That you could pay the \$100 and put up the other money when it was convenient, before the examinations were made?

A. Yes.

Q. At that time you filed only the report as to both companies before the examination as to the condition of the companies, if the reports were true?

A. Yes.

Q. There was no examination of them before that? You don't mean to say they were not examined in any way before, do you?

A. No, sir.

*Re-Direct Examination—*

BY MR. LEE: Q. There was no examination of the books and

records or securities of the company except by and through this little printed statement, was there?

A. No, sir, not to my knowledge.

BY MR. LEE: That is all, Mr. Lebo. Mr. Israel, do you care to have Mr. Lebo remain in attendance any longer?

BY MR. ISRAEL: No, sir, Mr. Lebo may go.

BY MR. LEE: We will call Mr. F. P. Jameson, who will testify in support of article 24.

F. P. Jameson, a witness being called on behalf of the state, after being first duly sworn, testified as follows:

BY MR. MANAGER EDGE: Q. State your name.

A. F. P. Jameson.

Q. What is your position at the present time, Mr. Jameson?

A. Deputy state auditor.

Q. How long have you been thus engaged?

A. Since January, 1905.

Q. Were you in that capacity during the months of July, August, September and October, 1906?

A. Yes.

Q. Can you from your record testify as to whether or not there were warrants issued to Mr. J. H. Schively, deputy insurance commissioner, at that time for salary as such deputy insurance commissioner?

A. There were.

Q. How many warrants were issued to him?

A. One each month.

Q. For how much?

A. \$150.00.

Q. Do you know whether the warrants were cashed by him?

A. I have the warrants in my hand here. I cannot swear to the signatures.

Q. Canceled warrants?

A. Yes, sir.

Q. Do they bear any indorsements on the back?

A. "J. H. Schively," with a small F. under it.

Q. In each case?

A. No, sir, in one case, and in two cases just "J. H. Schively."

Q. Those were the only warrants issued to the deputy insurance commissioner for salary during that time, I presume?

A. Yes.

BY MR. MANAGER EDGE: I will offer these in evidence.

BY MR. ISRAEL: No objection.

BY THE PRESIDING OFFICER: They may be admitted.

[Documents marked "Article 24, Complainant's Exhibits Nos. 5, 6, 7."]

[No Cross-Examination.]

BY MR. MANAGER EDGE: That closes the proof as to articles twenty-four and twenty-five.

BY MR. LEE: The only two remaining articles, I think, the managers can dispose of in a very few minutes.

BY THE PRESIDING OFFICER: You are ready to proceed, are you?

By MR. LEE: Yes; we will call Mr. Hulbert.

By MR. ISRAEL: On what article?

By MR. LEE: On article 21. Article 21 reads as follows: "That on May 7th, 1907, said J. H. Schively, deputy insurance commissioner, demanded of and received from the Union Guaranty Association, of Portland, Oregon, the arbitrary sum of \$200 to cover an examination of the books, records and securities of said association, which sum was greatly in excess of his expenses incurred in said examination; that said examination was perfunctory and occupied but a short time; that no detailed or itemized list or statement of expenses incurred in making said examination was presented to said association as by law required."

Wells Hulbert, a witness produced on behalf of the complainants herein, being first duly sworn, testified as follows:

*Direct Examination—*

By MR. LEE: Q. What is your name?

A. Wells H. Hulbert.

Q. Are you identified with the Union Guaranty Company, of Portland, Oregon, and if so, in what capacity?

A. General manager.

Q. Do you know H. D. Wagnon, former manager of the company?

A. No, sir, I never met him.

Q. Do you know as to his whereabouts?

A. No, sir.

Q. I will ask you to examine this letter and state if you ever saw it before, and if so, where you found it?

A. I took it from the safe of the company night before last.

By MR. LEE: I will offer this in evidence.

By MR. ISRAEL: No objections.

By THE PRESIDING OFFICER: It may be admitted.

[*Letter marked "Article No. 21, Complainants' Exhibit No. 1."*]

By MR. LEE: Mr. Secretary, I would like to have you read that.

By THE SECRETARY: "The State of Washington, office of department of insurance, Olympia, May 9th, 1907. H. D. Wagnon, manager, Union Guaranty Association, Portland, Oregon—Dear Sir: I herewith enclose your certificate of authority, copy of my report, license for yourself, and voucher covering your check to me. Being a stock company, I have not made the report of examination very elaborate, as you do not need the same. I wish you every success. Whatever I can do to assist will be kindly undertaken by me. I enclose blank forms for requesting licenses. These are five dollars each, and a request should always be accompanied by the fee. These licenses must be made in the name of an individual, and not in a corporate name. Where a firm is appointed, each member thereof must have a license. Very truly yours, (Signed) J. H. Schively, deputy insurance commissioner."

Q. State whether or not you have had recently access to the books, records, files and canceled checks of the company?

A. I have had access to all of the company's documents.

Q. State what canceled checks, if any, you have in your possession, executed by the Union Guaranty Company to Mr. Schively.

A. I have check No. 2027, dated Portland, Oregon, May 7th, 1907; Union Guaranty Association—

BY THE PRESIDING OFFICER: Wait a moment.

BY MR. ISRAEL: Please state what it is, Mr. Lee.

BY MR. LEE: State what receipt, if any, you have, in connection with this check.

A. I have receipt No. 108, from the insurance department of the State of Washington.

Q. Where did you get that receipt?

A. I took it from the safe of the company.

[Marked "Article 21, Complainants' Exhibits No. 2 and No. 3."]

BY THE SECRETARY: *Exhibit No. 2—*

No. 2027.

PORTLAND, OREGON, May 7th, 1907.

# UNION GUARANTY ASSOCIATION.

Pay to J. H. Schively or order, two hundred, forty and no-100 dollars.

W. D. GAFFNEY, *President.*

To Oregon Trust and Savings Bank,  
Portland, Oregon.

H. S. WAGNON, *Secretary.*

(Indorsed) J. H. Schively.

*Exhibit No. 3—*

No. 2027.

\$200.

# INSURANCE DEPARTMENT, STATE OF WASHINGTON.

OLYMPIA, May 8, 1907.

Received from Union Guaranty Association two hundred dollars, on account of official examination.

No. 3095.

J. H. SCHIVELY, *Deputy Insurance Commissioner.*

Q. State whether or not, of your own knowledge or from an inspection of the books, an examination of this company was made?

A. I don't know personally regarding that.

Q. You have not been identified with the company very long, have you?

A. No, sir.

Q. State whether or not this item occurs anywhere in the books of the company and, if so, in what connection?

A. The books of the company in use at that time are in storage practically, and I have not gone through them.

Q. Assuming that an examination was made on a certain date, and assuming that two days' time in Portland was consumed, approximate to this Senate what the expenses would be from Olympia to Portland, spending two days in Portland and returning to Olympia, making liberal allowance?

A. Why, I should say it would come well inside of \$30.00.

Q. At the outside, what would it be?

A. That is hard to tell.

# Cross-Examination—

BY MR. ISRAEL: Q. What is the name of your company?

A. Union Guaranty Association.

Q. When did you become a member of it?

A. August 1, 1909—August 2nd, the 1st was Sunday.

Q. You never have met Mr. Wagon?

A. No, sir.

Q. Never have been to his office down in the Worcestershire building, in Portland?

A. Never have.



Q. Do you know the history of the company before you became a member of it?

A. Only as I have heard it spoken of in the directors' meetings.

Q. It was a mutual company to begin with, wasn't it?

A. Well, there was a mutual company which was merged into this.

Q. A fraternal company?

A. I think so; yes, sir.

Q. And it merged into a stock company?

A. Yes, sir.

Q. And merged into a stock company along in the early part of May of 1907, didn't it?

A. I don't know as to the date.

Q. Do you know as to the year?

A. No, sir.

Q. How did you come to find this \$200.00 voucher?

A. In going through the papers in the company's office.

Q. Well, as a fact, Mr. Assistant Attorney General Lee visited your office and asked you about it, didn't he?

A. Not to my knowledge.

Q. Did he ever visit your office and have any talk with you about your testimony at all?

A. No, sir.

Q. Did he ever suggest to you that this money ought to be repaid?

A. No, sir.

Q. Have you ever made a demand for its payment?

A. Not so far as I know.

Q. Did your company ever attempt to re-collect it?

A. Not during my connection with the company.

Q. Well, do you know whether they did or they did not?

A. No, sir, I do not.

Q. Now, you don't know what this receipt for \$200.00 was given for beyond what it shows on its face?

A. No, sir.

Q. You don't know whether Mr. Wagnon requested Mr. Schively to come to Portland and help him transfer his fraternal company into a stock company, do you?

A. No, sir.

Q. You don't know whether they spent many days prior to May, 1907, doing the things necessary to make that transfer into a stock company, do you?

A. I have no personal knowledge regarding it.

Q. You don't know whether Mr. Schively assisted Mr. Wagnon in getting his company so it could go into California, Idaho and Washington, and other states?

A. No, sir.

Q. You don't know what was done for this \$200.00, do you?

A. I do not.

Q. You are not here pretending to say that there was not value received given for it?

A. No, sir.

Q. You are not here to say that it has been an extortionate or exhorbitant charge of any kind?

A. No, sir.

[Witness excused.]

BY MR. LEE: Have you any further use of this witness, Mr. Israel?

BY MR. ISRAEL: Oh, none in the world.

BY MR. LEE: For the benefit of the Senate, I will read the next article upon which we will offer the testimony of Mr. Harding. [*Reads article 18 of the articles of impeachment.*]

Philip Harding, a witness produced for and on behalf of the complainants, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. LEE: Q. State your full name.

A. Philip Harding.

Q. And residence.

A. Spokane, Washington.

Q. Have you been and are you now indentified with the Western Union Life Insurance Company, of Spokane?

A. I am and have been.

Q. In what capacity?

A. Secretary.

Q. Were you on December 12th, 1906, and May 12th, 1908, identified with that company?

A. I was.

Q. State to the Senate whether or not on December 12th, 1906, Mr. Schively, deputy insurance commissioner of this state, appeared in your office in Spokane and examined the affairs of your company?

A. He did.

Q. State to the Senate the length of time consumed in that examination and the extent of it?

A. He spent, I believe—I don't remember definitely—two days or the better part of two days. The examination took into consideration the looking into the company's securities that we were required to have at the time the certificate was granted us by the insurance department in this state to enable us to enter any other state and transact the business of life insurance.

Q. That was about the time of your entry to the state, was it?

A. Just subsequent to the time we entered the state. We were admitted, but the license was not issued.

Q. State what, if anything, Mr. Schively said to you about his usual compensation for examining insurance companies?

A. He told us after he had completed his examination—

Q. Speak louder.

A. He told us as soon as he had completed his examination that his charges were \$200.00; that those charges involved the customary fee and the expenses in connection with making that examination, and that he figured having expended four days' time going and coming and remaining in Spokane as necessary to the making of this examination.

Q. What did he say, if anything, about his customary fee per day or per week?

A. He told us that \$50.00 was the necessary and regular fee charged by him.

Q. \$50.00 what?

A. Per day, including the fees.

Q. And upon that basis, then, having spent a day in going and a

day in coming and two days there, he made his fee on the basis of \$50.00 a day, didn't he?

A. Apparently so.

Q. I will ask you to examine that, if you ever saw it? [*Hands paper to witness.*]

A. I have.

Q. Is this check and the receipt attached thereto the check and receipt given at that time and received by you?

A. Beg pardon.

Q. Was that check the one given to Mr. Schively in payment of this compensation and that attached receipt the one received by you?

A. That is the one.

By MR. LEE: I offer these in evidence.

[*Marked "Article 18, Complainants' Exhibit No. 1."*]

By THE SECRETARY:

No. 35.

\$200.00

WESTERN UNION LIFE INSURANCE COMPANY.

SPOKANE, WASHINGTON, Dec. 12, 1906.

Please pay to J. H. Schively, deputy insurance commissioner, or order, two hundred and 00-100 dollars, payee acknowledging same by indorsement hereof to be in settlement of account appended on reverse side hereof.

To Thos. H. Brewer, Treasurer,  
Spokane, Washington.

PHILIP HARDING, *Secretary.*

Payable at Fidelity National Bank, Spokane, Washington.  
(Endorsements) J. H. Schively, Dep. Ins. Com'er.

[*On reverse side.*]

VOUCHER CHECK No. 35.

WESTERN UNION LIFE INSURANCE COMPANY

*of Spokane, Washington  
In Account With*

J. H. Schively, Deputy Insurance Commissioner,  
State of Washington.

<i>Date.</i>	<i>Items.</i>	<i>Amount.</i>	<i>Distribution.</i>	<i>No. Charge</i>
Dec. 12.	For examination of company's financial constitution and securities as Dec. 8, 1906, and further examination of reserve valuations of policies as of December 31st, 1906 .....	\$200.00	5	\$200.00
	Totals.....	\$200.00		\$200.00

*Correct.*  
McC.

*Approved.*

*Auditor's Space.*

[*Attached is the following receipt.*]

INSURANCE DEPARTMENT, STATE OF WASHINGTON.

\$200 no-100.

OLYMPIA, Dec. 15, 1906.

Received from Western Union Life Ins. Co. two hundred no-100 dollars, account of official examination.

No. 2980.

J. H. SCHIVELY, *Deputy Insurance Commissioner.*

Q. State whether at the time of this examination and at the time of this payment of \$200.00, or any subsequent time, any detailed statement of expenses incurred—

By MR. ISRAEL: One moment, Mr. Lee, I don't want to interfere but—

Q. State, Mr. Harding, whether or not at this time or at any subsequent time—

By MR. ISRAEL: I understand they are quarreling about fees, but I don't want the quarreling behind my back while they do it.

By THE PRESIDING OFFICER: We will have no interruptions.

By MR. LEE: When they adjust their differences, I will attempt to interrogate this witness.

By MR. ISRAEL: I want to hear the witness and with counsel standing at my back and disputing about fees, I cannot hear. That is all.

By THE PRESIDING OFFICER: Let us have order now. Go on.

By MR. LEE: I will withdraw that.

Q. Mr. Harding, state whether at this or any subsequent time Mr. Schively presented to you a detailed and itemized statement of his expenses incurred in making his examination of December 12, 1906?

A. None was, and none was required.

A. What was that last answer?

A. We did not require any.

Q. And he did not offer to give you any, did he?

A. He did not offer to give us any.

Q. You are familiar with the living expenses in Spokane about that date?

A. Why, to a certain extent.

Q. Well, sufficiently so you can approximate it to this Senate?

A. I believe so.

Q. Allowing every liberality and latitude, state to this Senate what the approximate expenses of a trip from Olympia to Spokane, consuming one day—

By MR. ISRAEL: Two, the witness testified to.

By MR. LEE: What is that?

By MR. ISRAEL: The witness testified to two.

By MR. LEE: I understand.

Q. State what the expenses are, allowing great latitude, or would be, from Olympia to Spokane, spending two days in Spokane, and returning to Olympia—in other words, consuming four days' time?

A. Well, I presume the railroad fare and incidental fare on the railroad, such as berth fare and meals—

Q. Allowing for the delicacies of the season.

A. And the expense of living in Spokane while he was there would probably not exceed \$80.00.

Q. That would give the man the benefit of every doubt, wouldn't it?

A. I believe so.

Q. State whether or not on May 12th, 1908, the deputy insurance commissioner of this state examined the affairs of your company?

A. He then again looked into our affairs.

Q. State what time was consumed in that examination?

A. I don't remember, but it was not of the duration the previous examination was.

Q. State approximately.

A. It probably consumed three or four hours.

Q. Not longer than half a day.

A. I doubt if it was.

Q. State what, if any, demand was made upon you at that time by Mr. Schively in the way of compensation?

A. As near as I can remember, Mr. Schively stated at that time we would be liable extra for a *pro rata* fee and that *pro rata* fee would be \$35.00. I did not understand at the time why he named that as a *pro rata* fee, but I assumed he was examining other companies over there on other business, and I believed his examination made at that time covered his investigating our securities and looking over our books. He had access to our records and such matters.

Q. Identify that check if you can. [*Hands check to witness.*]

A. I recognize that as the original check.

Q. Given in payment of—?

A. Given in payment of general expenses in connection with the official examination on that date.

By Mr. LEE: We offer that in evidence.

[*Marked "Article 18, Complainants' Exhibit No. 2."*]

(*Void if altered, mutilated or detached.*)

No. 1696 F

\$35.00

FIDELITY NATIONAL BANK.

SPOKANE, WASH., May 12, 1908.

Pay to J. H. Schively, Depty. Ins. Com., or order, thirty-five and no-100 dollars, payee acknowledging same by endorsement hereof, in space provided hereon, to be in full settlement of account appended on reverse side hereof.

WESTERN UNION LIFE INSURANCE COMPANY.

Office No. 2652.

PHILIP HARDING, *President, Secretary.*

(Endorsements) J. H. Schively, Dep. Ins. Com'er; J. E. Hough.

[*On reverse side.*]

Office No. 2652.

Voucher Check No. 1696.

WESTERN UNION LIFE INSURANCE COMPANY

*of Spokane, Washington  
In Account With*

J. H. Schively, Deputy Insurance Commissioner.

<i>Date.</i>	<i>Items.</i>	<i>Amount.</i>	<i>Distribution.</i>	<i>No.</i>	<i>Charge</i>
1908					
May 12.	To general expense in connection with official examination .....	\$35.00		5	\$35.00
	Totals.....	\$35.00			\$35.00

*Correct.*

*Approved.*

*Auditor's Space.*

M. E.

WARNING:—Conserve the integrity of this voucher-check. Do not detach therefrom any attached invoice or memorandum.

Return to Western Union Life Insurance Company intact in case of error.

Q. Now, Mr. Harding, you stated that on the prior visit he stated that the charges were \$50.00 a day. Did he have anything of that character to say on the last visit?

A. He told us on the last visit that that was a *pro rata* charge, and it would be for less than the original charge.

Q. Did he or did he not say on the subsequent visit anything about \$50.00 a day?

A. I don't remember that he did.

*Cross-Examination—*

BY MR. ISRAEL: Q. Mr. Harding, permit me to refresh your recollection a little.

A. Yes, sir.

Q. And see if you have not gotten this \$35.00 *pro rata* tangled up with something else? Do you remember about that time of your company wanting to go into Montana?

A. Yes, I do.

Q. And do you remember that you met Mr. Schively on the street and asked him to come up and examine you and give you a certificate to go into Montana?

A. I do remember that, and that opens up a new line of thought.

Q. Now, don't you remember after he had gotten through and you asked him how much it would be, he said it would be nothing, Mr. Harding; "I am here on convention matters"; and you said, your company never asked anybody to do anything for nothing, and you ordered the bookkeeper to draw him a check for \$35.00, and asked him if that would be satisfactory, and he thanked you for it?

A. At the time, no; I cannot answer that; no.

Q. What is your recollection of it?

A. My recollection was, inasmuch as you have suggested the Montana matter, that the company was about to enter the State of Montana at that time or period—I presume about that time—and that the state auditor of Montana or the insurance commissioner of that state was about to come to the office and make an examination of the company, and he requested that it be arranged, or said that he would arrange, to have a joint examination made with Mr. Schively and Mr. Walter Keith, the insurance commissioner of Idaho, whereby the three would undertake jointly the examination of the company's affairs. Owing to the fact our company, the Western Union Life, decided it inadvisable, after getting a further report from the State of Montana with regard to entering that state, owing to the rate of taxation imposed upon a life insurance company operating in that state, we called off the deal of being examined for the purpose of entering Montana. Mr. Schively, however, appeared on the scene at the time, in accordance with, I presume, an arrangement made with Mr. Cunningham—

BY A SENATOR: Speak louder; the Senate cannot hear you.

A. [*Continuing.*] An arrangement he had made with the insurance commissioners of two other states—Montana and Idaho—and said he was willing to conduct the examination alone or otherwise. He decided, or we decided mutually between us, that he was then and there to make a cursory examination of the various affairs, and it consisted, I believe, of his looking into our securities and records. I have forgotten to what extent the examination did go.

Q. You had gotten up a report for the Montana commissioner and Mr. Schively looked that over, did he not?

A. I have forgotten whether that detail was gone into or not.

Q. Does your recollection still serve you that Mr. Schively requested of you \$35.00, and that you did not voluntarily pay to him the amount?

A. Well, that was his charge at the time; I remember that.

Q. Do you remember whether that charge grew out of a voluntary proposition on behalf of you to pay him or demand on your part?

A. He had come there and involved the expense of coming, and it

was a *pro rata* arrangement of some sort, as I have said before. That was the reason for the charging up of the amount, as I remember.

Q. Well, did you recall it at that time as excessive?

A. No, we did not.

Q. Did you want or require any itemized statement?

A. We did not require it, as we did not in the former instance.

Q. Did you care for it in either instance?

A. We did not feel that it was necessary to question the charges made by the insurance department of this state.

Q. Were you at that time in any wise dissatisfied with it?

A. Not in any particular.

Q. Are you now?

A. No.

*Re-Direct Examination—*

By MR. LEE: Q. If the law had required an itemized statement, do you think you would have been entitled to it?

A. We would have been entitled to it, probably.

By MR. LEE: That is all. Can Mr. Harding be excused now, Mr. Israel?

By MR. ISRAEL: Yes.

By THE PRESIDING OFFICER: He may be excused.

By MR. LEE: Mr. President, may the managers have a few minutes for consultation at this time? I think we will be able to announce whether we have concluded.

By THE PRESIDING OFFICER: The court will take a recess for five minutes.

By MR. LEE: *Mr. President, and Gentlemen of the Senate*—This concludes the case in chief on the part of the managers. There was a demurrer sustained to article 1. In regard to article 2, Mr. Lebo testified. Articles 3 and 4 were covered by depositions, and in support of article 4 there were about 12 or 15 depositions read. At this time, and inasmuch as articles 10 and 14 would be merely cumulative and cover identically the same character of offense as specified in article 16, the managers do not feel warranted in offering evidence. That concludes everything up to 14—or to 16, I should say—Evidence has been introduced to each and all of the other articles with the exception of article 26, and at this time the managers do not desire to offer evidence in support of article 26.

By THE PRESIDING OFFICER: Mr. Israel, the managers rest their case.

By MR. ISRAEL: Well, your honor, I believe this honorable court would save time if they would grant me this last half hour so that I can arrange my opening statement, and arrange it in topics, and not be compelled to roam all over the testimony, as I would have to do now without having some little thought as to it.

By THE PRESIDING OFFICER: I think we will take an adjournment at this time until 9:30.

By SENATOR RUTH: I move that we adjourn as a court of impeachment.

BY THE PRESIDING OFFICER: That is not necessary; I will make the ruling on that. I will allow the defense until tomorrow morning to make their opening statement. The Senate as a court of impeachment is adjourned until 9:30 o'clock tomorrow morning.

At 4:35 the court of impeachment took an adjournment until tomorrow morning.

SENATE CHAMBER,  
OLYMPIA, WASH., August 20, 1909.

The Senate, sitting as a court of impeachment, convened at 9:45 a. m.

BY THE PRESIDENT: Are you ready to proceed, Mr. Israel?

BY MR. ISRAEL: Yes, your honor. If your honor please, and gentlemen of the Senate, you have heard the various opening statements that were made by the gentlemen in charge of this prosecution as to what they expected to prove, and with the proof establish the guilt of this respondent as to the various articles of impeachment that are herein left and exhibited against him, after the elimination of those that went out and were not returned by further amended articles; and you have heard the proof that has been actually made, and such of the proof so actually made that in anywise tended to establish, or rather to verify the opening statements of these gentlemen. It is not the province of the respondent's counsel at this time to discuss any of the discrepancies or differences or failures between the statements and the proof. That is a matter that we reach at the conclusion of the cause; but it is the province of the respondent's counsel at this time and the place, in the orderly trial of the cause, that he should state to you as briefly as possible, and yet with sufficient detail to be intelligent, in turn, what the respondents expect to prove, and submit to this honorable body in his defense, and as a reason why no verdict of guilty should be recorded against him as to each or any of these articles. In order that we may intelligently comprehend the force and the effect of the evidence that is promised to be exhibited to you, it were better at the threshold of the statement to look into the laws that were on the statute books—the laws of this state that existed at the time of the commission of the alleged offenses—not only those already directed to your attention, but those which have not been called to your attention, in order that the sum of the testimony may be illumined by the bearing in mind that these laws existed upon the statute books at the time of the commission of the acts complained of. Briefly summarized, the defendant has been charged with—and the proof has been directed to an attempt to establish three offenses—extortion by receiving fees for examinations without making the examinations; *second*, by extortion in charging for examinations in greater amounts than, it is contended



by the prosecution, the law permitted to be charged; and *third*, by perjury by the respondent before a grand jury at Spokane—the commission of the crime of perjury. I think when we trim all side or collateral contentions that the charges of these articles resolve themselves broadly to those three things; that there is a complaint here that the respondent collected moneys for the examination of companies who were admitted to the state upon their preliminary report, without having made the examination; that there is a complaint here that examinations were made and too much money charged; that aside from the independent personal charge of perjury against the respondent, the matter resolves down to an ultimate, that these are the two offenses, or alleged offenses, with which he stands charged, and that within them are contained all of the minor charges that are adduced from them; but that such is the ultimate upon which a verdict is sought. I invite your attention first, as you are judges both of the law and the facts, and while judges of the law and facts are not presumed to have an intimate knowledge of the laws that are governing the facts, or may be germane to the action, to these laws that existed, as I said, at the time these alleged things were done, which they say were high crimes, misdemeanors and malfeasance in office on the part of this respondent.

By an act of your legislature of 1895 there was provided the requirements necessary for insurance companies to operate and do business in the State of Washington—the amount of their capital stock, their assets, etc., etc.—and it was provided that a certificate of authority to do business should issue from the insurance commissioner, who at that time was the secretary of state, there then being no distinct office of insurance commissioner, but that officer, being *ex-officio* insurance commissioner, and having charge of—in the secretary of state's department—the affairs of the state in its dealings with insurance companies. It provided that the insurance commissioner should issue to any insurance company, association, or corporation a certificate of authority to transact business in this state under the following conditions:

*First:* If a company, corporation or association organized under the laws of this state—when he was satisfied that the provisions of this act in relation to such company, corporation or association has been complied with;

*Second:* If a company, corporation or association organized in any of the United States or territories—when he was satisfied that the company, corporation or association has net assets or paid up unimpaired capital of one hundred thousand dollars;

*Third:* If a foreign company, corporation or association—when he should be satisfied that the company, corporation or association has made a deposit with the insurance commissioner of this state, or with the proper officers of some other state, of not less than two hundred thousand dollars in the bonds of the United States, or the bonds of any state in the United States.

By section 7 of this act it was provided that the insurance commissioner—then secretary of state—should have the same supervision and was authorized to make the same examination of the business and affairs of every insurance company, corporation or association, foreign to this state, and doing business herein, as of domestic organizations doing the same kind of business, and of its assets, books, accounts, and general condition. I omitted to read the section applying to domestic corporations, which is exactly the same, as he had to make the same examination:

Every organization foreign to this state, its agents and officers, shall always be subject to and be required to make the same statements and answer the same inquiries and are subject to the same examinations, and, in case of default therein, to the same penalties and liabilities as domestic organizations doing the same kind of business, or of any of the agents or officers thereof who are or may be liable to under the laws of this state or the regulations of the insurance department. The commissioner may, whenever he deems it necessary, either in person or by his deputy, repair to the general office of such non-resident organization, wherever the same may be, and make an examination and investigation of its affairs and condition. He may cancel and revoke the certificate of any such non-resident organization refusing or neglecting to comply with the provisions of this act, or refusing the examination herein provided for, and prevent such organization from further continuance of business in this state. The expense of every examination or investigation of the affairs of any organization, pursuant to the authority conferred by the provisions of this act, shall be borne and paid by the corporation so examined. No charge shall be made for any examination of an insurance company except for necessary traveling and other actual expenses incurred.

Now, as this particular section of this act now under discussion will be finally submitted to this body for its construction, and as much of the testimony will cluster about a portion of this section, for the purpose of enabling the ultimate construction, I invite your close attention to the actual wording of the clause. And I concede and acknowledge that my reason for so doing is my conception that already there has been an attempt by the board of managers to materially narrow the import that flows from these words: "No charge shall be made for any examination of insurance organizations except for necessary traveling and other actual expenses incurred." No charge shall be made except for necessary traveling expenses. Now, I am segregating, reading portions of the entire sentence. The entire sentence reads: "No charge shall be made for any examination of insurance organizations except for necessary traveling and other actual expenses incurred." No charge shall be made, then, except for necessary traveling expenses. No charge shall be made, then, except for other actual expenses incurred. I give that as the most liberal construction that can be placed upon the language of this section for the purpose of distinguishing it from what I conceive to be an attempt by the managers to narrow that section to much narrower limits and to make it read, "No charge shall be made for any examination except for necessary expenses," an attempt, evidently, if I can see it right from the opening statement of

the counsel, to strike the word "actual" as if it did not exist in the paragraph at all.

With this digression I will proceed to read:

All charges for making an examination shall be presented in detail and shall be paid by the organization examined. Should payment be refused, the bill shall be approved by the commissioner, audited by the state auditor and paid, and his warrant drawn in the usual manner on the state treasurer for the purpose of making the examination, and the commissioner shall revoke the certificate of authority of the company that shall refuse to pay the bill for expense of examination and shall not again grant it its authority until it has paid to the state treasurer the amount of such bill. It shall be the duty of the commissioner to make a detailed examination of all companies, corporations or associations organized under the laws of this state as least once a year.

Now, in connection with these insurance laws, we have another law—there was another law relative to fraternal insurance—enacted in the laws of 1901 and 1903 by the legislature of this state. I do not deem it necessary to read the entire act as to the admission of fraternal beneficiary societies for the purpose of their placing themselves under the control and supervision of the insurance department; but I read simply what section 120 provided, which will suffice, I think, for the purposes for which I am quoting it—that is, an intelligent understanding of the testimony to be offered: "Any association doing business under this act"—that is, fraternal—"shall be permitted to do business upon filing annually with the commissioner of insurance of this state the certificate of authorization of the insurance department of the state, province or territory in which it is incorporated or organized: *Provided, however,* In cases of failure to file said certificate by any such association or in case the commissioner of insurance"—which was the secretary of state until 1909—"shall deem it necessary, he shall have power to examine, either personally or by some person designated by him, into the conditions, affairs, character, business methods, accounts, books and investments of such association at its own office, which examination shall be at the expense of the association. The amount thereof shall not exceed \$200.00 in associations with no reserve or emergency funds and \$400.00 for associations with reserve or emergency funds."

Now, your attention is directed to this clause that stood at the time, and has always stood, and now stands side by side with this other law, by the interpretation of which it is sought to establish malfeasance in office because of failure to file an itemized account of the necessary and actual expenses of an examination of a mutual or stock company; while at the same time by this other act of your legislature as to all fraternal organizations you had provided—without any check, or limitation as to the itemized statement of actual or necessary amount of expenses—that when your commissioner examined a fraternal association he could make such charge as he saw fit, provided it did not exceed \$200.00 where there was no reserve fund, or provided it did not exceed \$400.00 if there was a reserve fund.

Now, I want you to carry in mind while you listen to this testi-

mony the fact that this condition existed by virtue of your own legislative enactment all of the time, that it is charged that the flat rate of \$200.00 was being charged; that it is conceded and will be conceded and never has been disputed—no issue taken with it—that the department rule of the secretary of state's office until 1909 was to charge a flat rate of \$200.00 against stock and mutual companies, and the department rule was also to charge against fraternal companies \$200.00 for examining into their affairs; and that at that time, under all the transactions that we are trying at this time under a charge of malfeasance, because he charged \$200.00 to a stock company you had authorized him to charge \$200.00 to, without any detailed expense account, without limiting to actual expenses, without limiting to necessary expenses, whenever he examined a fraternal company.

Now, I want you to carry this fact in mind: That your insurance department, as the evidence will show you, when under the management of your secretary of state, had before it for its construction all of these laws—not any one of them; that it realized that you had said to that department, "Whenever you see fit in your judgment to examine a fraternal company, if it has no reserve fund, you have our permission and the permission of the law to charge that fraternal company \$200.00, but you must not charge it any more than \$200.00, no matter what your actual expenses may be in so doing, and we don't say anything to you as to what you shall do to earn that \$200.00; you will use your own judgment as to your expense account, actual or necessary. You are licensed to charge them \$200.00; if they have a reserve fund, you are licensed to charge them \$400.00, but no more."

Now then, gentlemen, we want you to carry all these insurance laws in your mind in listening to this testimony, because the testimony will be directed to that which is now an admitted fact in the case and which has always been the defendant's contention, as it is the defendant's answer and is plead in his answer, and to which a demurrer was filed by the managers, but which demurrer was withdrawn, because it was never presented, and by which such acquiescence it was not questioned as not being a valid defense upon introduction of certain testimony in the case. In other words, we have answered and will introduce evidence to prove and substantiate the answer that notwithstanding we did charge this flat rate of \$200.00, it was under the departmental rule, with no intention to violate the law, with a belief that the law justified it, and that, although it was done, it was not done with any guilty purpose or guilty intent or criminal intent; that criminal intent is necessary here, and that we were right in the contention that it was admitted by the state when, under the exception to the rule of evidence, that for the purpose of showing guilty intent or guilty fixed purpose you may prove other offenses than those for which the party is charged, to furnish evidence that may tend to prove one or two of those conditions—that is, a fixed scheme of guilty purpose, or unlawful purpose or unlawful and guilty intent—the depositions were permitted in evidence. The offer at the time, you will

remember, was made on the theory that it was for the purpose of fixing a scheme of guilty, of unlawful and fixed purpose, and the deposition read to you came in under that exception to the law of evidence, which otherwise would not admit them at all. So that I take it now and shall proceed to introduce my evidence upon the theory that it is not only the law, but it has been admitted to be the law of this case.

By MR. LEE: No, no; we don't admit that, Mr. Israel.

By MR. ISRAEL: I said that I would proceed upon that theory. I would not expect you to directly admit that you were alive.

Now, gentlemen, keeping in mind these various acts and laws governing the department, this is about the state of facts we expect to prove and establish before this court upon this defense, and as a reason why the respondent is not guilty as to all of these articles of impeachment that grew out of the committee's labor; entirely distinguished from the interpolated perjury article that came into the proceeding after it reached the House of Representatives, this is about the state of facts that we expect to prove, not in detail of the proof, but pointed out to you in such detail as will make a connected story. In the first place, in 1904 the work of the insurance department of the secretary of state's office only increased—this is as far back as we deem it necessary to show statistics to this body—only increased \$3,000.00. In 1905 it increased, over 1904, \$27,000, and there had been no increase in the office force of the insurance department, and no increase could be gotten or appropriation gotten for any increase in the department commensurate with the increase of work; but the legislature in their wisdom held the appropriation for the insurance department down to the old, original appropriation that existed when the business was \$30,000 a year less in fees and commissions to the state, and the insurance department was compelled to be operated with the same force. At this time it became a question of finding time to examine insurance companies that were applying to be admitted to the state. But—pardon me—chronologically I have gotten ahead of myself as to this proof. The condition of the law, as I stated to you a while ago, being as I read it, there came up a question in the department as to the charging for the examination of insurance companies, irrespective of whether they were a mutual, stock or fraternal company, and the department rule was promulgated by the commissioner that there should be no distinction—that the stock and mutual should pay the same as the fraternal, and all should pay \$200.00, and that rule was put into force. Others than Schively were sent out—other persons connected with the insurance department in the secretary of state's office were sent out to make these examinations, authorized and instructed to and did make the same flat rate charge of \$200, no matter what kind of a company it was, whether it was fraternal or whether it was stock or whether it was mutual; and such became the policy of the department, acquiesced in by everybody, and laid down as a rule and condition.

Now, reaching this state of affairs in 1905—that the business had so grown that there were not people enough in the office to take care of the office business, to say nothing of anybody going out as an examiner or examining companies, for mere lack of numbers, either in or out of the state, and especially out of the state, who applied to come in and sent in their sworn statements as to their conditions; because, understand, as will be shown by Mr. Schively's testimony, or as I intend to show you by his testimony when he is on the stand, if I don't forget it, if you don't already all know, the operation of these insurance laws for the admission of these companies—the operations of the law, the provisions of your law—are that when the company applies for a certificate to come into your territory and do business, it supplies, properly certified or sworn to, copies of its articles of incorporation, the names of its officers and detailed items of its conditions and affairs, assets and reserve funds, the amount of its outstanding policies, and all those things. That is presumed to be a truthful and correct statement; and if it is not suspicious on its face, the practice is to admit the company, to collect the admission fee that goes to the State of Washington—\$35—and grant it a certificate to come into the state. Then it is the duty of the department, as soon as it can, if there is any question in its mind—any question at all in its mind of the necessity for any verification—to go to the company's office and verify this report, make an examination and see if this report is correct, and if it is not, to cancel the license; if it is, to come away and let them alone.

Now, in 1905—and I hope you gentlemen will pardon me for going so much in detail, because I think the very detail is going to shorten this examination, as it will avoid the asking of many preliminary questions, so as to get you to understand what I am trying to get at, so that you will know in advance what we are after—in 1905 the condition of growth of business in the insurance department had become so great that the force was inadequate in the office of the insurance department to take care of the office business, let alone sending anybody to examine any company; and the companies were coming faster and faster each year, as we will show you. Since 1905 up to 1909 there have been 200 companies admitted in this state to do business, as contrasted from the very few that are exhibited to you here in these articles. Since 1905, 200 have come into your state to do business, every one of which was subject to examination, if it were possible to make it.

Now, realizing the inability to get an appropriation increased over that of 1904 for the insurance department force, no attention being given to the report by the insurance department as to the condition of its affairs or the report made of the office, but being put back upon the same old appropriation, it became necessary to devise some way to put some sort of a safeguard or check upon these incoming companies that were sending in their reports, apparently fair upon their face, and getting certificates to do business in the state with abso-

lutely no examination or no possibility of an examination as to the truthfulness of their report—no chance to send anybody to make any such examination—there arose in this department a discussion of ways and means, because the department conceived and feared that it had gotten abroad in the insurance world that companies could do business in Washington without any fear of examination; that if they presented a report to the commissioner's office under the laws of Washington, they would get a certificate to do business and that they could do business indefinitely, because they never would be examined; that the department had ceased making examinations. Now, they conceived, the evidence will show, that with the brightness of these men—the mentality of the men who deal in insurance—this fact had gotten abroad, that their hands were tied, that there was no danger of an examination—this respondent at the bar and his superior officer feared that with that condition of affairs and that knowledge abroad, the state would be flooded with wildcat companies, as there was no check on them; because, in the first instance, when you come to examine your law, all they filed with the secretary, under the law that you provided for the operation of your insurance department—and the matter will probably be corrected by you or by your code commissioners on insurance—was the mere certificate of the condition of affairs of the company.

If any company sent in a certified report, certified by its own officers, not even under oath—am I right, Mr. Schively?—

BY MR. SCHIVELY: Under oath.

BY MR. ISRAEL: [*Continuing*] that would admit them to the state, and it was assumed that they know the laws of the state; they were entitled then and there to a certificate, subject only to a check examination, when, if they didn't check, their certificate was canceled. That was the condition, gentlemen. The department, under its department head in the secretary's office, saw that under this condition the state would be soon flooded with irresponsible companies. Now, they were intensified in that fear by reason of the fact that the legislature of this state had provided an act whereby they were inviting and offering to every wildcat marine insurance company in the world an invitation to come into the state and do business without any check of any kind by the insurance department on them, and the attorney general's office had given an opinion to the insurance department that such companies had a right to license automobiles under the marine organization, and the department heard in a roundabout way that they were actually writing fire insurance. Now, Senator Fishback, you smile; let me show you the law by which every wildcat marine insurance company in the world is invited to come into this state and do business and go out when they please without any check examination or anything else. You, senator, helped kill the bill last winter introduced by John Schively—

BY MR. LEE: Now, we object, if your honor please, to his calling out the senator—what he did and did not do.

BY THE PRESIDENT: The objection is overruled.

BY MR. ISRAEL: I will accept the statement of counsel. I will be impersonal. The legislature last winter refused, and this I will prove is true, to amend this article or to pass a bill that would get at these companies. Here is the law:

*"Marine Insurance Brokers.*—The insurance commissioner is hereby authorized to license marine insurance agencies or brokers to solicit marine insurance for companies that have not complied with the insurance laws of the State of Washington." Now, gentlemen, that has been the law of your state since 1901. When you were asked last winter to kill it, you wouldn't do it. And under this law you have invited and are inviting today any marine insurance company anywhere, any place in the world, by its agents and brokers, to write or solicit marine insurance, by companies who have not complied with the laws of the State of Washington—not making a report, not subject to this examination, not even telling the insurance department that they are in existence. And that law, I will show you, became a factor in the policy of bringing into this state wildcat companies, when the department had become so congested that it could not take the time to send a man to make the examination of them. Then the opinion by the attorney general's office will show you, as given by the attorney general, or his assistant, Mr. Falknor, that these organizations which had not complied with the law of the State of Washington were permitted by that law to solicit automobile insurance under a marine policy. I have not digested that opinion. There may be reasons for it; though it would strike me at first blush as being somewhat ridiculous. Still Mr. Falknor, I realize, is a good lawyer, a man of ability, so recognized throughout the state, and so recognized by people who know him, or should know him, and undoubtedly he was correct, although the advice may look absurd in his opinion. But the department, as I say and I will show you also, learned indirectly that not only automobile insurance was being written by these marine people who had not complied with the laws of the State of Washington, but that they were actually writing fire insurance. Still there was no way to find out that fact, because there was no chance to take anybody out of the office and send them to run these fellows down. We will show that at the same time and ever since and up until now the news is constantly coming in that some fellow was soliciting insurance and having no license to do it; that they were doing the same thing in 1905 and are doing the same thing in 1909. We will show you that this condition existed in 1905. The department called on the attorney general of this state, the Honorable John Atkinson, for an opinion. Now, I want to relieve your minds—and, by the way, I will say that I believe I am familiar with what the testimony was as it really came before this committee. Mr. Atkinson was not called upon to fix a flat rate for the insurance department; he was not called upon to legalize any flat rate fixed. We will show you from the record that Mr. Schively never testified before that committee that Mr. Atkinson



agreed and fixed at flat rate of \$200. But General Atkinson was called in as attorney general of this state by the insurance department of the state and the situation was put up to him and his opinion asked. Prior to this the insurance department, in its consultations, had come to a solution of the question, as we will show you, along these lines—thus they had stated it among themselves: “If at the time these companies applied to be admitted into the state to do business, owing to the fact that we cannot examine them now and cannot examine them until such time as the legislature offers us sufficient funds to create a sufficient force to do it with, can’t we arrange some proposition that will be somewhat of a check on them?” Some one then suggested—I don’t know whom, and will not attempt to prove—that if they were required to pay their examination fee at the time they applied to enter the state, if they were a legitimate company, they wouldn’t object to paying. It would be rather a hall mark of their good standing and of the fact that they were representing themselves truly as applicants for admission; whereas, if they were illegitimate, or came under that wide term “wildcat,” they would hesitate to put up the examination fee in advance, with an assurance that the moment they were examined their license would be canceled and they would be kicked out of the state. And that was as near a solution of the situation as could be gotten at. So, then, Attorney General Atkinson was called into consultation and stated, in his opinion, which we contend is the law, that under the laws of the State of Washington it is not extortion for any officer to collect fees in advance—and, by the way, we have had that ruling in this case at one time when his honor Senator Presby presided. So the attorney general advised it would not be illegal for the insurance department to demand in advance the necessary deposit or money for examination fees, to be applied when the examination was made. Now, under fortification of that opinion—which was the law and is the law, as every lawyer knows, and which I believe the honorable counsel knew when they read their common law relative to extortion in collecting fees before the service was performed—fortified by that opinion, the insurance department said: “We will fix a charge and examination fee in advance—to be paid in advance—of \$200 for any company, any foreign company, applying for admission into this state, because prior, under the old rules, in the trips to the eastern states to verify reports Commissioner Nichols had apportioned the cost of the trip *pro rata* among the companies to be examined and found \$200 to be the average. And we will show you it was an equitable charge. It was the equitable thing to do, because there is no limit under this law as to the amount of the actual or necessary expense in connection with an examination of stock or mutual companies. The charges are limited in the fraternal organizations to \$200; such are protected up to \$200. There is no protection to the mutual or the stock. We will show you that under some of the examinations made under a similar law in New York, which came under investigation during the great insurance scandal trials, a bill for examination by the

New York commissioner of one company, and not a large company at that, amounted to \$5,000; and under this law, you will immediately see, and we will show you by this proof, that Mr. Nichols could himself have gone, or sent anybody else—could have gone and taken a clerk and deputy with him, for instance, to New York city, and have sat down in the Mutual Life office in New York, went to the best hotel in the city, lived on the best in the land, smoked the best of cigars, and drank the best of liquors—because he was entitled to his actual expenses; that is the language of the statute—and remained there for the balance of the year, and the New York Life, under this bill, under the provision of this statute, would have had to foot the bill or had their license canceled by the State of Washington. That is the possibility of that law under which they claim this respondent is guilty of malfeasance in office, because his superior has fixed a flat rate for every company. Those are the possibilities of a person who wanted to visit a large city in the east under guise of examining an insurance company. If he wanted to be dishonest, he could spend his summer at the company's expense and the company would have to pay or have its license canceled. That is the literal translation of the statute.

Now then, when they had the facilities, instead of making a trip to a special company—to New York, we will say, and coming back, which \$200 wouldn't pay, and if two men went (the commissioner and his deputy or assistant) \$400 wouldn't pay, and as a matter of fact the evidence will show they did so go together—the rule had been fixed at \$200 flat rate for each company. So then, with the advice of the attorney general, that they would be violating no law in compelling a payment in advance for examination fee to be used at the time of the examination, the commissioners fixed that fee at \$200, and immediately notified everybody that applied for admission that they would be required to pay—what? "Thirty-five dollars to the State of Washington for admission fee and \$200 for the verification of your report." And this is the high crime and malfeasance charged in this case. Now then, this was the condition when this rule was put into effect, and the purpose and necessity of the rule, as I have shown you, or as we will show by the evidence as to this rule.

But the business of the insurance department of this state went on by leaps and bounds, and between 1904 and until 1908 the increase was \$75,000 per annum over the business of 1904, and no increase in office force.

By Mr. SCHIVELY: That is not per annum; that is the aggregate.

By Mr. ISRAEL: Thank you; that was the aggregate increase. The actual figures Schively calls my attention to are as follows: In 1901, not reading the odd dollars in the hundred column, \$57,000; 1902, \$69,000; 1903, \$86,000; 1904, \$89,000; 1905, \$117,000; 1906, \$143,000; 1908, to November 15, \$194,000; and this year already the increase until the present time over the entire income of last year of \$194,000; the increase this year over that up to right now has been \$40,000. And still we will show you by the evidence that from 1905 down to 1909 no

increase was permitted by the legislature, in its wisdom, in the office force of the insurance commissioner. He had to accomplish the work caused by this increased business, increasing by leaps and bounds, with the same office force and with his hands absolutely tied as to himself or anybody else moving out of the office for any purpose, and unable to rightly perform the work that was being done, until the partial relief caused by the creation and establishing and organizing of the separate office of the insurance department of this state, which was brought about by the act of the last legislature.

Now then, reserving until I close a statement—the opening statement—as to what we expect to prove in detail as against each one of the articles of impeachment; coming along down with the general story as will be told from the witness stand in answer to all of these articles of impeachment, we will show you that in 1905 Mr. Charles Murray, of Spokane, came before the legislature with a pet bill; and that bill was to create the office, or to create the right in the state to organize stock insurance companies—that is, stock insurance companies, insuring live stock—and the bill was passed. That shortly thereafter this now defunct Pacific Live Stock Insurance Company came into existence in Spokane. We will show you that Mr. Murray and John Schively were in a degree intimates, and that John Schively was very much interested in the working out of this new venture, as it was a problem whether live stock insurance would work out successfully or unsuccessfully in this state; that he kept quite in touch with this company whenever he was in Spokane; he was in and out of its office and discussing its probabilities and possibilities; that it grew with leaps and bounds; was an unqualified success; that it did an immense business. It was making an immense amount of money and issuing an immense number of policies, and these facts were discussed with the various officers—with Mr. Murray and those with whom he was acquainted in the office—and the general condition of this company during this period of its existence was closely watched. Mr. Schively became acquainted with Ward, who was then its president. The then manager of the company was a Mr. Hillicker; he became acquainted with Hillicker. There was at this time in the office a stenographer of Mr. Hillicker's, and also in the office, as an employee of the company, Mr. Ward's wife. A difference grew up between Mrs. Ward and Hillicker's stenographer, with the result that always happens—differences occurred then between Hillicker and Ward. Hillicker was compelled to give way and get down and get out and Ward held the fort; and with the going of Hillicker came Mr. Schrock into the manager's chair. Ward had not gotten rid of Hillicker through any disposition or any objection he had to Hillicker, but he had gotten rid of him because of Mrs. Ward's differences with his stenographer and Hillicker's profession of justification of the stenographer. But with the coming of Schrock there was a different state of affairs. Ward had no use for Schrock and Schrock had less use for Ward. Now, John Schively had never met Schrock, the evidence will show—carrying in mind this as a resumé of what the

evidence will show—he had never met Schrock, but had become quite well acquainted with Ward. Ward's health was bad. Now, here we pause a moment to direct attention in this statement to Ward—to what we claim was the object of Mr. Ward in his testimony while on the witness stand that Schively solicited being taken into the company. Ward met a Mr. Hobson in The Dalles in February, 1906, and talked with him as to getting Hobson into the company to take Schrock's place as manager. Now, I hope that you will pardon all of these details, because I am going to take the position that I took while these gentlemen were on the stand, and will attempt the establishment of it—the absolute perjury of Schrock throughout this entire case, and Ward also. After Ward had talked with Hobson in The Dalles in March, 1906, Hobson then, at the advice of Ward, wrote to John Schively regarding the matter; and I will introduce in evidence the letter that Hobson wrote to Schively and which has been identified. In this letter Hobson detailed his tentative arrangement with Ward for succeeding Schrock. Schively had never heard of Hobson, but took Hobson's letter and enclosed it in one from himself to Ward, down in Arizona. In answer to that letter, Ward wrote back, returning the Hobson letter to Schively—the letter that is already in evidence, in which Ward said that it would be a good thing to get Hobson into the company, and he suggested to Schively the best way to do would be to for Schively to prepare to examine the Live Stock Company as insurance commissioner and employ Hobson to do the auditing, and in that way Hobson, by auditing the company, would be introduced into the company and could be worked under Schrock and eventually into the management. That is told there by that letter already in evidence; but then and there Schively broke off, as it were, with Ward, because in the first instance he didn't propose to lend himself to any such proposition as insurance commissioner, and further, because up to that time all that he had done was through sympathy on his part—lending his good offices to Ward, and because he sympathized with him in getting rid of a man Ward didn't like and that he (Schively) didn't know. Siding in with Ward as against somebody he didn't know, and never had heard of before; having the success of the company at heart, which he felt was a creature somewhat of his own creation, he thought he would show his courtesy, let it extend to whom he knew as against other officers who he did not know.

But in the meantime Mr. Schively had met and become acquainted with Mr. Schrock. He was back and forth from Spokane, and Schrock, with Murray and others and himself, had discussed the possibilities of this company. We will show you the possibilities of this company with the right manager; possibilities beyond calculation; that the insolvency today of the Pacific Live Stock Association is not the result of embezzlement, and is not the result of excessive charges by its officers; is not the result of a wrong field of venture; but a creature of magnificent possibilities destroyed by bad management, and nothing else. Now, we will show you that Mr. Schively at this time—Mr. Ward

was away, in Arizona—became acquainted with Mr. Schrock and was looking into this business; he knew that the money was coming in by the thousands and thousands every month, was insuring stock all over the state; it was a pioneer in that line and was what the business men and farmers had long wanted for the protection of their stock; and he knew the company was growing—and John was watching it grow.

Ward was complaining about Schrock and Schrock was complaining about Ward; Ward did not suit him. John was now getting the other side of the matter; he was now hearing Schrock's side of the proposition, and Schrock's plaint was that Ward was a disturbing element, and if they could only get Ward out they might succeed in doing something. Now, as directed against the evidence that Mr. Schively was first to be a trustee of this company, and switched—that Schively bought Ward out—give me attention; give attention to the story I will show to you by this testimony, and which I believe will impress you with its truthfulness.

A solution was being sought by Mr. Schrock as manager as to his differences with Mr. Ward. Mr. Ward was in Arizona, and dissensions would start again when he came back. It was a bad condition for any growing concern—when a conversation occurred between Messrs. Schively and Schrock that seemed to be a solution. John Schively was giving his ideas as to the management, and the kind of a man that ought to be really at the head of the company; and what his knowledge—expert knowledge—should be, when Schrock said, "Mr. Schively, what will you take to quit the insurance department of the State of Washington and come over here and go to work for us as an employee and manage this whole thing for us?" That started the discussion. Schrock says, "We will give you anything you want; you can have anything you please"; and John asked, "What are you folks making out of it?" and Mr. Schrock said, "We are all getting six hundred dollars a month in commissions upon our field business; each has a set of agents, who report to him, and he takes three per cent. millage on their business up to two hundred thousand dollars—up to six hundred dollars—and then we take nothing more," and he told Schively all about how they were working it. John said to him, "That is very well, but I am a man with a large family. Here is an element of chance in your manner of compensation. My salary is fixed, though it is small. I would not want to come over here and leave that position for less than four hundred dollars a month, if you are making six hundred dollars a month." Schrock said, "If you will come for four hundred dollars, the job is yours," or words to that effect. It was put up to everybody; it was the solution for everybody. It was satisfactory to Ward, and the proposition then was that Schively should go to work for the Live Stock Association as an employee, to generally manage its business for four hundred dollars a month, to be paid by the association. This was along in June. The question was as to when he could come. He was to go home and make arrange-

ments and get ready and see them again. Mr. Schively's memory is not particular in all the little details, all the little details between this time and until the time he finally assumed charge in Spokane, but he went and came several times, until finally he was there on the first of July, at which time—the 1st of July—it was definitely agreed by Ward and Schrock and the others that he was to come on the 10th of July, or about the 10th of July, and assume his duties as manager at a salary of four hundred dollars a month. In the meantime Mr. Schrock and Ward handed him a check for two hundred dollars as compensation to him for his services as the go-between that he had been for weeks in attempting to get this business on to a right sort of a basis; and as compensation to him, in a measure, until he got ready and actually went to work at four hundred dollars a month, as their manager. At the same time they figured up the expenses he had been to and gave him a check for that, and also, as he would have to come and go until he finally severed his connection with the insurance office and took his chair for every day as manager of the stock company, and draw his salary at the rate of four hundred dollars a month, the company paid for a mileage ticket of three thousand miles, including his berth home of two dollars and a half, seventy-seven dollars and a half—three thousand miles, seventy-five dollars. This mileage ticket was to be used by him as his individual property until he became manager, and to be used on behalf of the company after he became manager, because when he came and finally went to work he would be severed from Olympia, and there was no further necessity of his running back and forth; and with those understandings and those payments of two hundred dollars, being a payment gratuitously for past services and services to be performed before he advanced to the position—the seventy-five dollars being for past expenses, and the mileage ticket for the purpose I have already stated—Schively came on home. He made his arrangements to sever his connection with the insurance department. He resigned from the insurance department, took the train and went to Spokane, arriving there so that he would be ready to enter upon his position on the 10th as manager under employment of the company. He met Mr. Ward on the street. He told Mr. Ward that he was ready now to assume the position, to go to work and to try and straighten things out. Mr. Ward was bitter, bitter, bitter all day regarding some fresh offense of Mr. Schrock's, and Mr. Ward said to Schively, "If I could only get twelve hundred dollars out of the concern, I would get down and get out." John said, "Would you take \$1,200 for all of your interest in the company and get out?" Mr. Ward said, "I certainly would," and Mr. Schively said, "Well, I think you can get out. You wait until I can see the others." John went directly to Mr. Schrock and said to Schrock, "Ward wants to sell out; he will get out of the company for \$1,200"; and Schrock says, "That is the very proposition. We will pay him his \$1,200. We will get him out and instead of employing you as manager we will make you president and trustee. You go back and tell Mr. Ward to come down

to the office and that we will hold a meeting and fix the matter up." Schively then said to Schrock, "You don't want to forget, Mr. Schrock, that any arrangements that you make for me to be president and trustee is not to change our arrangement that I came over here on; that irrespective of what you folks get out of commissions I am to have four hundred dollars a month?" Schrock says, "That will be understood and attended to; that is all right." Mr. Schively went back to Mr. Ward and said to him, "I have told Mr. Schrock what you said. Mr. Schrock wants you to come down to the office and they will take you on your proposition." This was in the afternoon or along towards evening of that eventful—what has now become that eventful day. It was the afternoon that Mr. Schively was to have returned to Olympia, to come over to Olympia—that night for the purpose of going to the Elks' convention at Denver—and that had been agreed upon earlier in the day. Some time before train time, Schrock—Copeland, who, by the way, we will show you is Mr. Schrock's brother-in-law, by the testimony—Copeland and the bookkeeper, Mr. Shallenberger—not the assistant bookkeeper, but Paul Shallenberger, the head bookkeeper—Shallenberger and Copeland came to where Mr. Schively was and told him that they wanted him up at the board. He went with them. Now here we are compelled to make an admission that sits ill upon the respondent, but one that many of us have been equally as guilty of in transgression, to each one—to our shame who so transgressed—John Schively that day definitely bettered his condition two hundred and fifty dollars a month. John Schively had that day stepped out of a position, a clerkship of one hundred and fifty dollars a month, into a salary of four hundred dollars a month; into what he conceived to be a company that was going to grow to be one of the strongest institutions of the state, and which would probably as the years rolled by increase his salary to the salary that is drawn by the presidents of great insurance companies. John, after his last talk with Schrock, when Schrock told him, "Leave that to me; you go and tell Mr. Ward to come down to the office and we will fix it up, and then we will make you president and trustee instead of an employee as manager"—John proceeded to do a little celebrating. When Copeland and the bookkeeper came after him—and these statements, although very humiliating, are necessary to the absolute truth; the statement I am making to you is of evidence I am going to introduce in the testimony here, and I for one shall go down into my grave believing it to be the absolute truth; John was somewhat intoxicated—drunk. He was taken up to the board room, or went up to the board room. He went in. The record in this minute book here had been made. Mr. Ward had tendered his resignation as president and trustee. John Schively had been elected president and trustee. Because the president and manager before that time had been signing checks, and the new president had not yet qualified, and was going away on the train that night to the Elks' convention, and would not be back for several days, a further resolution, as is shown by those minutes, was had, that the sole signa-

ture of Mr. Schrock would be sufficient to draw the funds; and we will show you in that connection—it will be developed later—that no matter what the other resolutions as to the president or anybody else signing the checks were, up at the bank Schrock had it fixed so that the bank would not pay a check to anybody that did not have Mr. Schrock's name on it. In other words, Mr. Schrock might sign a check, and if it did not bear the president's signature, notwithstanding the resolution, the bank would pay it. If the president signed a check without Mr. Schrock's signature also upon it, the bank would turn it down. That was the condition of the affairs, but the other members of the company did not know it. We will show you by this testimony all the way through that some, if not all, the members of the Pacific Live Stock Association were "thimble-rigged"—I got that word out of a newspaper the other day, out of the Tacoma Ledger—they were "thimble-rigged" by Schrock as much as Schively was. I am going to show you by the evidence that Schrock stands in the limelight in this situation, and is the one who is responsible for the humiliation of this indictment for perjury and for the condition of this Live Stock Company, and the awful condition of its books. Now, the resolution was passed that Schrock—the resolution was incorporated in the laws of the company—that all checks should be signed by the president and manager, and a great many of them were; but, notwithstanding the resolution, the bank would honor on the same fund any check that was signed by Schrock without the president; but the president going out that night, Mr. Schrock, in order to keep his records right, would have to take some action by resolution that would avoid the by-law that the regular president and manager should sign the checks; so he had the resolution passed, which you see in the minute book, that Mr. Schrock's signature would be sufficient to check out the funds of the company in the bank. Now, there is absolutely no question in my mind that at that time it was represented to Mr. Ward that he was to be bought out by the company in the interest of Mr. Schively; but it is also clear to my mind that notwithstanding all of the evidence that I can get to introduce to you, and as well as notwithstanding the evidence that has already come from the witness chair, it must remain a matter of conjecture as to what did happen in that board that night, or what had resulted in the preparation of the four notes by Mr. Shallenberger, the bookkeeper, and the signing of them for and on behalf of the company by Mr. Schrock, manager, all of which undoubtedly occurred. As to whether John Schively ever signed those notes or not, is a matter that, without the gentlemen upon the other side will get those notes for us, or we succeed in getting those notes, must ever remain a mooted question; but that if he did sign those notes that he signed them as president of the company with Mr. Schrock as manager, is equally certain to my mind, if he signed anything; because Mr. Schively will tell you that he has some recollection, when he went in with Copeland and the bookkeeper and was congratulated, and shaken hands with and notified that he was now president and trustee that he has a hazy recollection



of his being asked by the bookkeeper to sign some papers, as he was now president. That he did sign or did not sign, he will not say; that he was asked or was not asked, he will not say; but he will tell you that, as he has been harassed with this matter, there seems to be a dim inner consciousness of his being requested by the bookkeeper that evening to attach his name to some papers as president, or as he understood as president, but that he never authorized any one to purchase the Ward interest for him; that he never authorized any one to make any notes for him for the purchasing of any interest; that he never agreed with Mr. Ward to purchase his interest; that he simply, when Mr. Ward announced that he would like to get twelve hundred dollars and get out of the company, out of all of the trouble and worry of it, as he was sick and disgusted, announced to Ward that he thought he could put him in touch with a proposition whereby he thought he could be bought out. Mr. Schively will again tell you from the witness stand that which he has told always and forever—that he never consciously signed any notes; that he never entered the stock company upon a commission basis, or upon any but upon a flat salary basis; that he never bought the Ward interest or authorized any one to buy it for him.

We will show you further by the testimony that it was then along nearly train time—getting close to train time. [*To the Secretary.*] Let me have those exhibits, that check, please. I omitted to say, gentlemen, that earlier in the day, before Ward had said to John Schively that he wished he could get \$1,200 out of it, and he could get rid of all the worry and annoyance—that earlier in the day, when it had been definitely arranged that John was to become the employee and manager of the company, and prior to this talk between him and Ward, John had suggested to him his desire to go to the Elks' meeting down in Denver, and that now it was agreed that he was to begin from that day as manager, he would like to draw part of his salary in advance; he was a little shy of money. And Schock and Ward gave him at that time a check for \$200, on July 10th. Mr. Schively does not remember where he cashed the check, but his best recollection serves him that it was in one of the Spokane banks; and we will show you that that seems to be corroborated by the fact that the check was paid in Spokane through the Spokane clearing house on Schively's indorsement, so that it must have gone into some other bank and been cashed and gone through the clearing house back to the bank it was drawn on; but it will appear that he had drawn that money so advanced before his going as an emissary from Ward to Schrock with Ward's new proposition that he would get out if he had \$1,200, and Schrock saying, "That is the very thing; instead of being manager, we will get him out and make you president."

Now, we will further show that John, as soon as the meeting broke up there, started to leave the room as soon as the business was over—the meeting was over before John got there. John was in a good humor

and he immediately proposed to buy, and he started with Schrock to Wil-mot's, I think the place is—some saloon—and in going over he said to Schrock, "Well, did you have any difficulty getting Ward to his terms," or something of that kind, some expression that grew out of a natural curiosity as to just what the details were of the transaction by which Ward left the company; and that then Schrock made what seems to us now this significant statement—and I think that there will be other evidence to corroborate this statement aside from Mr. Schively's testimony to be given on the witness stand; I hope to have such evidence—"Well, I tell you, John, how we got rid of him. We have let him keep his millage until the first of October. Then the millage comes to the company. Of course, after the first of October, if you want that millage in place of your salary, you can have it, and I think you will want it, because you know that it is more money than you are making at \$400.00." John said something about there was sufficient time for that when the time came around and they bought their drink—several drinks—and John came home. We will show you, if we are permitted, by no less a person than your ex-treasurer, Mr. George Mills, that when John came home he was still a little hilarious and reported to Mills his good luck and his good fortune, and said to Mills, when Mills asked him how much he had bettered his condition, "It is a whole lot better, Mills"—

By MR. MANAGER EDGE: Mr. President, I desire at this time to object to counsel stating any conversation that Schively had with some one else after this occurred. Counsel knows that he cannot under the law introduce evidence to prove that statement, but he is trying to get the matter to the Senate through his own statement and then, if the proof is shut out, intends that the Senate should have the benefit of it. Counsel knows he should not undertake to state what he knows the law will not permit him to prove, and I assume from his statement that he is now endeavoring to state to the Senate some conversation that was had with the treasurer over here in Olympia, in which certain things were said between them, and which is not material to this case, and which should not be permitted in his opening statement.

By MR. ISRAEL: Absolutely true; that is what I propose to do, your honor, under the rules of law that the gentleman is familiar with, in a criminal trial for perjury; and I assume if it were competent there, it is competent here; that the declarations or acts of the defendant relative to the matter that he is charged with, with committing perjury, would tend to explain or show that the fact that he had stated, although untrue, was not a willful statement of the untruth—his admission. And if your honor has any doubt, there sits across the way an ex-member of the supreme court of this state, whose decision I will be willing to take upon the question—that where a man is charged with having wilfully and corruptly committed perjury, any fact that would tend to show that although the matter claimed as perjury was untrue, was not wilfully and corruptly stated, would be evidence in the case.

By THE PRESIDENT: The chair, not being an attorney, did not expect

to have to rule on any of these things. Senator Presby, who is a member of the Senate, and who has heard the arguments as well as the chair, I will call to the chair at this time to rule upon this question.

BY MR. MANAGER EDGE: I will state, perhaps, I have a right to answer the contention of counsel.

BY THE PRESIDING OFFICER: I wish to hear from you.

BY MR. MANAGER EDGE: I assume that he is going to try to prove or state that he will prove that Schively came over here after this transaction and told somebody that he was going to get \$400.00 a month, and he is going to bring that party in here to prove that Schively told him that; that, at most, would be a self-serving declaration. It is not admissible in its own behalf and it is not admissible under any theory of the law that I am familiar with. Now, if the court desires any authorities on that subject, I will ask the court to reserve its decision and we will present them.

BY THE PRESIDING OFFICER: I would certainly want some authority before I ruled on that, under any circumstances, as claimed by the counsel, but in any event the statement of the counsel will not be considered by the senators as evidence, and if the testimony is ruled out when offered, this statement will be withdrawn from any consideration.

BY MR. MANAGER EDGE: Let us understand, then, what your honor desires authority upon. Your honor tentatively holds, then, that statements made by the respondent to outside parties in reference to a transaction which he had with the company would be admissible; is that your honor's contention—or tentatively holding and will hold in the instance the authorities are not to the contrary?

BY THE PRESIDING OFFICER: I shall.

BY MR. MANAGER EDGE: Very well. I shall ask your honor to reserve decision until we can present authorities.

BY THE PRESIDING OFFICER: Do you object to counsel proceeding on that line, with that understanding, that any remarks that he makes, if the testimony—

BY MR. MANAGER EDGE: Well, I will object. I still maintain that my construction of the law is correct, and I object to stating any conversations that Schively had after he returned to Olympia, with some one who had no interest and who had no connection with the case.

BY MR. ISRAEL: I simply maintain that I expect to prove it, and if the court does not permit me to prove it, my statement falls.

BY THE PRESIDING OFFICER: Can you pass to some other subject to consume the rest of the morning?

BY MR. ISRAEL: No, I would rather do this: To keep chronologically along, I would rather omit it from my opening statement and offer it on the witness stand.

BY MR. MANAGER EDGE: That is satisfactory.

BY MR. ISRAEL: Yes; but I don't withdraw it by reason of submitting to your proposition of law, not at all.

BY MR. MANAGER EDGE: I don't claim that you do, Mr. Israel.

BY THE PRESIDING OFFICER: I do not wish to prejudice your case

if you should proceed, because it may not be withdrawn from consideration. This is a mere statement of what he proposes to prove. He may make any statements that he proposes to prove.

BY MR. MANAGER EDGE: Well, the court can overrule my objection and let it go ahead.

BY MR. ISRAEL: Has the court ruled?

BY THE PRESIDING OFFICER: I will permit you to proceed.

BY MR. ISRAEL: He stated at that time to Mr. Mills that he was bettering his condition materially; that he was going into a company with a great future and with a great future for him and the opportunity of a lifetime; that he expected the growth of the company to be such that the salary would eventually be a princely one; that he was starting as president of the company at a salary of \$400 a month. We will show you by the evidence that Mr. Schively tendered his resignation to the secretary of state as insurance commissioner. We will show you that immediately upon his resignation, as soon as tendered, the secretary of state began immediately seeking a successor. We will show you the secretary of state went to Mr. Niles and sought him as a successor, or Mr. Paul, and sought him as a successor, and, in connection with the seeking of Mr. Paul, the secretary, discussing the resignation of the office, told Mr. Paul the policy of the office of the charging of flat rate examination fees that was participated in by the secretary and by his deputy.

We will show you that Mr. Schively, a few days after, went to the Elks' convention, and in a few days or short time thereafter arrived back at his desk at president of the Live Stock Association at Spokane. Now, as to John Schively, we will show as a fact—and it will not require evidence to show that fact—John Schively is not a business man. But in the history of this state—and I am afraid the real reason for his trial now—has been a "cracker-jack" good politician. Now, John Schively, as we will show you—John Schively's knowledge of politics—was such that within ten days after he reached the office of the Live Stock Association and assumed the presidency, he knew that it was a question of but a short time until John Schively, president of the Pacific Live Stock Association, would be a "dead one," because he had gone in, as we will show you, to this association for the purpose of changing its methods of business to a proper insurance basis and getting it on its feet to grow the growth that it should make. And one of its principal troubles was that it was not requiring enough money premiums; it was taking too many notes and hampering itself for money. It was not getting money. It was getting thousands and thousands of dollars' worth of notes piled upon it that were not available as assets—quick assets. And one of his policies—as we will show you—was to get it more upon a cash basis; but he discovered right at the beginning a house that stood divided against itself. He was the fifth trustee. He found arrayed on one side Schrock and his brother-in-law, Copeland, who were working hand in hand. He found arrayed upon the other side Walker and Hunter, who had a different idea as

to how things should be conducted. He found a disposition of Schrock and Copeland not to agree to anything that Walker and Hunter wanted, and *vice versa*. He found that Walker and Hunter, working in the field to swell their millage, were making the company pay their expenses; and he found that Schrock and Copeland who were not working in the field, were kicking upon the proposition. And all the troubles came up to him as mediator with his fifth vote; he voted with Schrock and Copeland because it was right to shut these other two fellows off from making the company pay their expenses—make them pay it out of their own pockets. That, to use a vulgarism, “sored up” Walker and Hunter; but in a day or two another proposition came up in which he was compelled to decide with Walker and Hunter, and immediately Schrock and Copeland got “sore.” In the meanwhile he discovered that, by the by-laws, Schrock was in possession of all the finances of the company. He had made the discovery that, while he was signing checks as president, and Schrock signing as manager, under the by-laws, which required the president and manager to sign the checks, nevertheless Schrock’s individual checks would get all the money in the bank any time he wanted it. Equally he found that his own hands were absolutely tied as to changing any of the methods of this company. He found—now here is where John’s good politics and political science came in—he said to himself, “Treating this as a political game, two of these fellows are sore at me today and two of them are with me; but tomorrow, if I decide against these two, I will get these other two sore and then the four of them will throw me out”; because the by-laws, as I show you—provide that a trustee may be removed upon a majority vote of the trustees. So John says, from political knowledge, “I see my finish in the Live Stock Association, and I not only see it, but I see a condition here that I am absolutely helpless to remedy. I see a great, big, growing concern with thousands of dollars worth of assets, making money in spite of itself, that by its policy must go to the wall, because of the necessity of money and not of notes.” And so then and there, within ten days after his affiliation with this company, John Schively wrote to Sam Nichols, “If you have not gotten a successor to me, don’t get one. I will come back.” And he went to Schrock and he said to Schrock, “I must sever my connection with your company. The situation is such that it is useless for me to remain with it. Your company is all right, but I am powerless to change your methods with your present board of directors and your present by-laws and your present rules, and you are ‘a house divided against itself,’ as pictured in the good book.” Schrock said, “John, don’t quit us. If you do, people on the outside will think there is something rotten in the company and it will hurt us.” John said, “Schrock, I don’t want to do that, but you must let me out; I have got to go.” Schrock said to him, “Well, stay with us until we can find a suitable person that will take your place”; and John said to him, “I will; get him as soon as you can.”

That day John Schively began traveling back and forth between

Olympia and Spokane, transacting the business of deputy insurance commissioner, directing clerks in that department, and directing as best he could the matters and affairs of the Live Stock Association of Spokane. By force of these very facts, so far as he was concerned, he was out of the Live Stock Association; his apparent remaining was simply because he did not want to hurt the company with the outside world in trying to give them an explanation for his withdrawal, before some good man could be found to take his place. And that is the malfeasance of the double salary. They did not get a man. They kept putting it off until finally in September, Schively said to them, "Find somebody to take my place, or I will go any way." Shortly after that Schrock came to John Schively and said, "Mr. Bennington will take the presidency and trusteeship." John said, "How soon? How quick?" "I think either about the 7th or 8th of this month." "Very well; I will be back here on the 7th or 8th of this month. Have Mr. Bennington ready to take over the presidency of this company."

I am going to another topic now.

BY THE PRESIDING OFFICER: Very well. The Senate as a court of impeachment is adjourned until 1:30.

At 12:00 o'clock noon, a recess was taken until 1:30 this afternoon.

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### AFTERNOON SESSION.

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The Senate, sitting as a court of impeachment, reconvened at 1:30 p. m.

BY THE PRESIDENT: Senator Presby will take the chair.

BY THE PRESIDING OFFICER: Mr. Israel, you may proceed.

BY MR. ISRAEL: If your honor please, and gentlemen of the court, at the coming of the noon hour I had reached, in outlining the evidence that we expect to produce before you from the witness stand, the point in the story as told by that evidence reached at the time that Mr. Schively is waiting in Spokane to be relieved of his duties as president by the finding of some suitable person by the company to take his place, his journeys back and forth to the insurance department assisting in keeping up the affairs of that department. The testimony from this point on will show to your honors that it was finally announced by Mr. Schrock to Mr. Schively that a person who was suitable to the company, agreeable to the company and suitable to the position, had been found in one Mr. Bennington, and that Mr. Bennington had consented to assume the presidency and take—become a member of the board of trustees in the place of Mr. Schively, and then, or at a future time after this notification, Mr. Schively was informed that everything would be ready to consummate this matter some time during the day

of the 8th of October. On that day Mr. Schively was first in the office in the morning, and one of the employees directed his attention to the fact that there was insufficient postage in the box in the office to send out the mail for the morning or noon hour, whichever it was; whereupon the messenger or inquirer was handed by Mr. Schively \$1.50 to purchase postage stamps. Shortly after that, or some time after, Mr. Schrock came in and announced that Bennington would be ready in the afternoon to assume his duties and take over the office; that thereupon the accounts were cast up for the purpose of settling with Mr. Schively. It will be shown to you that Mr. Schively had in his possession what nearly all of us carry, a small memoranda account book or pocket book, and in it Mr. Schively had noted the various sums of money that he had received from Mr. Schrock at various times since the beginning of his employment with the company, and that he and Mr. Schrock cast up those accounts, he giving Mr. Schrock the various amounts and his calculations. His leaving on the 8th, he would have been with the company three months, less two days; that at a rate of \$400 a month, his salary would amount to eleven hundred and seventy-three and one-third dollars, against which he had had these various advancements as noted in his book, and he also directed Mr. Schrock's attention to the fact that he had spent \$1.50 that morning for the company, and Mr. Schrock was personally indebted to him in the sum of thirty dollars; that Mr. Schrock then called his attention to the fact that he had not paid the company for his membership premium note and that he owed the company the sum of \$7.50, Mr. Schrock at the time getting the note and handing it over to Mr. Schively. It will be shown to you that, according to Mr. Schively's recollection, no reference was had by Schrock to the books of the company, but Mr. Schively will not undertake to deny from his recollection that Mr. Schrock may have asked the bookkeeper for a verification of the figures as to checks and amounts paid Schively that he testifies that he did; but that at any rate the figures were accepted, the deductions and allowances made, and the result was a balance of \$260.48. Whereupon, Mr. Schrock gave him, as manager of the company, then and there a check for \$260.50.

It will be shown to you that at the time of this settlement Mr. Schrock had proposed to delay for a little while, or until a later time in the day, and Mr. Schively had stated to him that Mr. Ligget, the insurance commissioner from the State of Idaho, was in the city for the purpose of examining insurance companies, and desired the collaboration of the insurance commissioner of the State of Washington in making the examination, and that he (Schively) did not care to go into that examination until he was entirely free from the Live Stock Company, as he had not made any examinations since his connection with it. That afternoon Mr. Ligget and himself made this examination—either that night or the following day. They made the examination on the 9th—the following day after the settlement with Schrock. Either on the 9th or the day later, the 10th, Mr. Schively was ready to come home to Olympia. Being through in Spokane, he went to the

Live Stock Company's office for the purpose of saying good-bye to everybody; that when he arrived there there was a board meeting going on in the inner office, and that there was evidently—as soon as he came in behind the desk, he knew there was something wrong (that psychological influence that strikes any of us when we go into a house where there is a tumultuous condition and influence which we cannot explain, but which we feel). Mr. Schrock met him at the door between the main office and the inner office, and Mr. Schively said, "What is the matter, Mr. Schrock?" or something to that effect. Mr. Schrock came over to him and took him over to one side of the main office, somewhere out of the earshot of the employees, and said, "Well, there is some trouble before the board, John. It seems your accounts don't gibe. It seems that you are indebted to the company"; and John immediately said, "Let me see that account, let me see the books." Now then, it will be shown to you that up to this time, and since that time as far as that is concerned, when he saw this memorandum—that from the time Mr. Schively went into the office of the Live Stock Company up until that day he had never had occasion to go over the books of the company or make an examination of his own or anybody else's account. He had made no examination of the books with any of the bookkeepers. He had found it was out of his department. As I stated this morning, within ten days after he had got there he discovered that Mr. Schrock was the whole thing; that everything had to come through Schrock, and that every policy was dictated by Schrock, and as soon as he had learned that it was his intention to get out and get out at once. He gave himself, as I will show you, no concern of his own account, because it was merely a simple operation of addition and subtraction, so much per month, so much due after he took out so much, after he had received so much during the month, all of which data he had in his pocket, which he had inserted in his memorandum of the money which he had received at the time he got his check, and he could offset it simply by a mental calculation on the basis of four hundred dollars per month. He said to Schrock, "Let me see the books." Schrock had in his hand a little—evidently this paper, [*indicating*] which is in evidence, upon which appears the pencil marks made by Mr. Schively, and he said, "Here is the account our bookkeeper took out of the books. This shows you the charges and the credits—the way they have been made"; and, which we will further show you, in connection with which it has been shown to you by the testimony of the bookkeeper, it had been made up in advance of its being posted in the ledger, and that it was posted in the ledger afterwards. Mr. Schively took it, and was mystified and perturbed by the array and mass of figures there, and said, "Schrock, I don't understand this. What do all these charges mean here." He said, "Schrock, here is four hundred dollars that I never got," and he put his pencil mark on there, [*indicating*] and then he went a little further down and he says, "Here is another one," and he marked that, and he said "I have been getting four hundred dollars a month, and I have had a balance due me every



month of whatever I did not draw over four hundred dollars," and he began to segregate the amounts by drawing lines—the lines there, written on there, a line here and a line there, in front of July, August, and September—and he would say to Schrock, "Here is a four-hundred-dollar item here," and he would mark that, and he would say, "Here is another item here of two hundred and sixty dollars," and so on through the account. Schrock said, "Hold on, if there are any errors in here, if that is a mistake, if that is a mistake there of four hundred dollars; now you mark down those figures, as I call them off for you"; and they stood with the paper on the table, Schrock standing alongside of John, and John with his pencil, and Schrock read to him and as Schrock read, Schrock said, "There are credits there, John, when they are put in that will make the accounts balance. There has been a mistake there." John said, "I do not know anything about what is there, but I wish you would come in before the board and explain this to the board. I know what our agreement was, and we have settled upon that agreement of four hundred dollars a month, and I do not owe a dollar to this company. I do not know anything about these figures, and I do not know anything about your books there." They walked in then before the board and John began to talk, having this paper in his hand, endeavoring to explain the settlement with Schrock in the morning, and Schrock interrupted him and said, "I can probably explain this better than you can," or words to that effect—I don't pretend to quote the exact words. "There are errors in this account which I have just discovered that will make Mr. Schively's account balance, and Schively really doesn't owe this company anything." Mr. Bennington spoke up and said, "I believed all the time that there was nothing wrong with Mr. Schively's account," and thereupon the matter was dropped and everybody shook hands, and Schively announced that he was going away that night; and what became of that paper, Schively does not know, but he is of the impression that he left it there on the board table. It did not bother him any more after the acknowledgment came to him that there was nothing due from him to the company. Mr. Schively came on home and assumed his duties in the insurance department. The first intimation that Mr. Schively had that there was any question as to his accounts with the Live Stock Association came to him upon the publication of the receiver's report to the court, upon the appointment of Mr. Charles Murray as the first receiver for the Live Stock Company. Mr. Schively saw from that report that he was charged with having received this \$1,200, as well as a large amount of other moneys, totaling some twenty-one hundred or twenty-two hundred dollars. I think that the evidence will show that there was some correspondence with Mr. Murray regarding that. But, at any rate, Mr. Schively went over to Spokane and he went to Mr. Murray and said to him, "Mr. Murray, I never got any \$1,200. I do not know anything about it." Mr. Murray says, "Yes, you did, John. You got the money and it is charged here on the books. It is three notes you gave Ward." But he says, "Murray, I never gave Ward any notes." "Yes, you did,

John. You gave him those notes," said Murray. Schively demanded the notes, demanded to see them, and Murray said they were in the possession of Mr. Schrock. I think at this time the evidence will show that the receiver had been dismissed in the federal court of Judge Whitson, and all of the books and the data of the company turned back to Mr. Schrock, who was again in the saddle, and the company again doing business for itself. Upon this statement by Murray, Schively went directly to his attorney, Mr. McDonald, and took the matter up with him, with the result that Mr. Schrock was either sent for or he came to Schively upon Schively's demand and dispute that he ever executed any such notes. Schrock went to the company's office and got the notes and brought them up and showed them to McDonald, in the presence of Schively, whereupon Schively said to McDonald, or words to this effect, "There, you see, Mac, it was not my debt, at all," or something like that; "I had nothing to do with it." McDonald examined the notes and gave them back to Schrock, and Schrock took them away. That was the first time John Schively ever heard of those notes or knew of their existence, and he has not seen them since the time they were handed to Mr. McDonald and examined by McDonald and handed back to Schrock, and he did not even at that time examine them himself, beyond the fact to see that they were company notes, Live Stock Company notes, given at the time he was president. We will further show that after being before the grand jury and receiving this awful grueling of a day and a half, Mr. Schrock asked him why he testified before the grand jury that he had not signed those notes, and John again replied that he had not signed those notes, and Schrock disputed it, saying that he did sign them, and again Schively made Schrock come up into McDonald's office and make his statement in regard to the matter, still contending, as he contends now, that he signed no such notes; and that if his name got onto any such notes it was not with conscious knowledge on his part, but as an officer of the company—without any examination. Now, in corroboration, I think that many of you senators who are renowned for aptitude in figures, as expert bookkeepers, in corroboration of that, for the purpose of making this test alone, when we offer this ledger account as kept by this bookkeeper under the instructions of Mr. Schrock, in evidence, will find from that account that so far as any embezzlement, any criminal idea or any wrongdoing, any attempt at wrongdoing is concerned, the books themselves will give Mr. Schively a clean bill of health, because they are made to show, and, if true, would show, that Mr. Schively bought the Ward notes for \$1,200; that Schively went in on a millage basis to succeed Ward; that Schively earned in millage nearly \$1,800; that John Schively or some one else drew from the company money enough to pay the Ward notes, and paid them off, and he was charged with the money, and that his millage credits paid every dollar that was owed to Ward, every dollar that was intended to be charged against him for his other withdrawals, and left him virtually a balanced account at the time that he went out. If the account that is

now balanced is taken as a true account, John Schively had earned in millage a sufficient amount of money to himself pay Ward \$1,200, and be paid himself every dollar that he drew out of the concern—as the books are now balanced. But, on the other hand, we will show you that a credit is given in those books of four hundred dollars to John Schively as money turned in to the company by Schively on the 10th of October, when he is alleged to have quit, received from Mr. Bennington, for the purchase of Schively's interest; that there never was any such transaction. Mr. Bennington has not been brought here and put upon the witness stand, although the transaction is set up in the perjury article. We will challenge with the evidence the fact, and establish the fact, that John Schively and Bennington never in their lives exchanged a word relative to the buying or selling of anything in the Live Stock Company, and Mr. Bennington, if I am properly informed, is at Waitsburg. But there is four hundred dollars credited on the 8th that the bookkeeper said was put in there after he had made up the account—that is, the account was made up after the \$260.50 settlement item had been posted as a debit charge against Schively. Mr. Schively gets credit for four hundred dollars, as having been received by the company from Mr. Bennington for the benefit of Mr. Schively, and the item makes his account balance; no, that item leaves a balance, a debit against Schively, Schively still owing the company, according to that, four hundred dollars. Now, we will show you in connection with this bookkeeper's testimony, further, that it being admitted that the Bennington four-hundred-dollar credit and the other credits to balance the Schively account had not been entered on the ledger at the time this account was made up, the account was made up first, and afterwards the ledger closed to correspond with the account; that taking the record as it existed on the 8th of October, when the settlement was made between Schrock and Schively, as it stood then, posted up to the day and not closed, when the time came to post the \$260.50 check—taking the account as it stood then—we will show you from this evidence that taking off the balance then and there from the ledger, with no credit for four hundred dollars from Bennington—at the time and the hour and the minute—that Schrock, as manager of this Live Stock Association, in bidding Schively adieu, and paying him off, was giving him \$260.50 in the face of a ledger account that showed an indebtedness of eight hundred dollars against Schively. Mind you, at that time when the \$260.50 was paid by Schrock to Schively, when he was leaving the office, surrendering to Bennington on the 8th—not on the 10th, when the account was put in—the unbalanced ledger account showed an overdraft on Schively of \$800, according to the books as they now stand, and the paying of the \$260.50 made Schively walk out of the Live Stock office and away from the presence of its manager, and its bookkeeper—made him walk out of the office \$1,060.50 overdrawn. Now, we will show you such was the condition, if the story is to be believed of Schively being on a millage basis, and the giving by Schively of the Ward notes. We will further demonstrate to you that on the 8th day

of October, if you will compute John Schively's pay at four hundred dollars a month, and deduct the debits that he had out of that four hundred dollars, there would be due him the sum of \$238.48; and if you allow him \$30.00, which Schrock does not pretend to deny that he owed him as a personal debt at that time, and which, strange to say, is the exact amount of an error correction on the credit side of the ledger, which reads "\$30.00 due by Schrock," you will have on that day a balance item, \$260.50, coming to John Schively.

We wish to further show you, gentlemen, by the evidence, in noting these various other articles of impeachment—if you will bear with me in this further statement—and with it I will be through with my opening statement. In defense of article 20, which is the Lebo charge of extortion, we will show you by the evidence, as stated before, that this charge was under a departmental rule of the department of insurance in the secretary of state's office, at that time in force for the very purpose of getting hold of the very kind of companies that Mr. Lebo wanted to bring in, to-wit: "If you want to enter a company from a foreign state, put up two hundred dollars for examination fees in advance and the state entrance fees of thirty-five dollars"; that when he expostulated and said that he did not have that much money, that he was entering the companies himself on a flyer, Schively said, "I will have to confer with my chief." He took the matter up with Mr. Nichols. They wanted to let the boy in upon his putting up the one hundred dollars and let him pay the other three hundred dollars as soon as he could. His companies were from Texas. There is no question but what he could go to the State of Texas and make that examination; if he were to go to Texas and make that examination, he would exhaust the whole or the greater part of the four hundred dollars; would exhaust all if two examiners went; and if one examiner went, he would require a greater length of time than would be required for the two examiners, to go away down to Texas. The money was put up for the purpose of making that examination in Texas as soon as it could be reached. The reasons were detailed to you this morning, as to why that examination was not made—because of the inability of the office force to reach it, because before a time came that it could be made the young man had made a failure with his companies; he had fallen down with the companies he was trying to bring in at his own expense, and notified the department that he wanted his one hundred dollars. The department said "No; by dropping your companies, they are not out of the state; the companies are now licensed, and admitted to the state. Don't forget the fact that they are yet to be examined. We shall examine them, nevertheless." But the young man became annoying about the office, and finally established the fact that his companies had gone out of the state, had gone from the state, and his one hundred dollars was handed back to him, after the fact that they were out of the state and had gone for good was established. Such is the defense to that article and its charge of high crimes, misdemeanors and malfeasance in office. The defense to articles 2 and 7 that yet remain in these articles

of impeachment fall under the head of the collection in advance fees, and it will be shown to you in that connection that it was the intention of the department—that the advance fee was required from these people to make this examination; it was always the intention of the department to make these examinations—and they were prevented from making the examinations by reason of the office being hampered by lack of an appropriation to provide sufficient employees to take care of the business in the office, let alone work outside of the office; and it will be shown to you that these examinations—of these companies still doing business in the state—will yet be made without a dollar's further cost to any of them.

Coming to article 17, which is the Evenson article, examination of the Washington Hardware & Implement Dealers' Mutual Fire Insurance Association, of Spokane, Washington, in which \$100.00 was charged, we will show you in connection with the charge of that article that it was not either excessive, arbitrary or extortionate; that a full and complete examination was made; that further time and expense was devoted to it in checking its final report and the final report Schively sent to the company. We will admit that no itemized statement was either demanded or given. We will admit the charge was made under the departmental rule.

As to article 19, as to the examination of the Farmers' Mutual Live Insurance Company, of Spokane, we shall rest largely upon the testimony of Mr. Harding, who will be introduced by the defense, together with the other proof—the general proof as to the conduct of this department in the secretary of state's office.

As to article 19, as to the examination of the Farmers' Mutual Live-Stock Insurance Company, of Spokane, we will show you that this was a thorough examination; that the witness who testified here was not present at any part of it, did not see any of it made; that Mr. Farnsworth was not even president of the company; that the president was a Mr. March, who we will introduce before you, and by whom we will show you that the examination was full, complete, thorough, and satisfactory, both as to manner and amount charged up. We will show you that the charge of the receipt by E. E. Ligget and J. H. Schively jointly of \$300.00 for second examination is not true; that Mr. Schively was present at that examination, not as the state insurance commissioner of Washington at all, but at the request of Mr. Ligget, of Idaho, to assist Mr. Ligget—Schively being in the city that day assisting in examination by reason of his past knowledge of the company, gained from the time he gave it an examination on the 12th day of June, 1907, and at the request of Mr. Farnsworth to Schively, with his knowledge of the company, to assist with Ligget to get his company into the State of Idaho, and that the \$300.00 charge was made for the examination by the Idaho commissioner, Mr. Ligget; and if necessary we will show that he has not yet been impeached by the State of Idaho for taking it.

Article 20, as to the Walla Fire Insurance Company, of Walla Walla, we will show you was a charge made under the department rule and

regulation after a thorough examination, with the added feature that at the request of the president of that company Mr. Schively personally devoted a large amount of time to aiding him and assisting him and showing him what was necessary for him to do to get his company into other states, among which was New York, a difficult state to enter; that the amount was paid by the president of that company to Mr. Schively, and that it was eminently satisfactory to them as for services performed in every way.

Article 21, which is the charge as to the Union Guaranty Association, of Portland, Oregon, in the sum of \$200.00, will develop this state of facts: That a Mr. Wagnon, who will appear before you, was the manager of that company; that it had been on a mutual basis; that it wanted to go on a stock basis, and wanted to go into other states; that Mr. Wagnon asked Mr. Schively to come to Portland, not as an insurance commissioner, but as John Schively, with expert knowledge of the necessities of a growing stock company in order that it would not be debarred of admission to do business in other states and in the State of Washington; that he helped them change that company from a mutual company to a stock company. After he had gotten it on its feet as a stock company, he made the necessary examination of it—that is, made the necessary certificate of examination, because the facts necessary for examination had all come into his possession in doing this previous work. He came home and sent Mr. Wagnon the necessary applications for admission of his company into this state, where it had not yet been and wanted to come, as well as to go into California and Idaho, telling him that the usual fee was \$200.00 and that this fee would cover everything—in other words, that under the circumstances he was not going to charge him any examination fee at all. Mr. Wagnon sent his check for \$200.00. He entered his company in the State of Washington. Afterwards Mr. Wagnon retired from it and is now operating another company in Oregon.

The charge set forth in article 22—the examination of the Falls City Fire Insurance Company, of Spokane—in which it is charged that the sum of \$50.00 was arbitrary and greatly in excess of the expense incurred, we shall meet by admitting that no detailed itemized statement or list of expenses was furnished, that none was demanded and none was requested, and stand upon the legal proposition and upon the further proof—all of counsel's testimony to the contrary notwithstanding as to how much it would cost to go to Spokane and come back—that under a law which permits actual expenses, which permits in its exact language necessary traveling expenses and other actual expenses, John Schively or myself or any member of this legislature could not make the trip for a less sum; I don't believe, especially if it is anywhere around political times, could get to Spokane and stay a day for twice the money spent in actual expenses. In other words, gentlemen, we will show you that \$50.00 is not exorbitant and is well within the actual necessary expenses of the trip to Spokane; and besides, it does not go

out of the range of the testimony of one of the state's own witnesses in fixing the amount at \$80.00.

Article 23, which was the article in which it is claimed that there was an arbitrary attempt to hold up the Atlas Insurance Company, and that C. S. Best, of Seattle, the western representative of the company, advised said company that the only entrance fee that could be charged would be \$35.00; and upon receipt of said advice from Best the company again wrote to Schively as such deputy insurance commissioner, and received a letter containing the same representations above set forth. Thereupon Best went to Schively's office in Olympia and had a conversation with Schively concerning the representations and about the attempt of Schively to extort from said company an advance fee of \$200.00 not authorized by statute; and Schively as deputy insurance commissioner did then and there, on or about the 15th day of July, state to Best that if he had known Best represented the company in this state, he would not have sent the letter to the company, but the company would have been admitted to do business in the State of Washington upon payment of \$35.00; and that thereafter if Best would notify him of his desire to represent this company or any other company, it would be entered for \$35.00 and without requiring it to put up the advance examination fee. The respondent will admit in its generality, but will show this state of facts, as before explained—the evidence will show that this \$200.00 examination fee to be paid in advance, had been fixed as to the amount not only because it had been determined that sum would be necessary to go east and make an examination of any company, no matter how far away they were, but because the attorney general had said that it would not be illegal or violation of the law to collect in advance, and was for the purpose of a check, as it were, upon companies trying to come into the state who could not pass muster upon examination by the insurance department. We will admit that the representations were made to the Atlas Company that it had to put up this usual \$200.00 in advance to cover the examination fee when it was made; that the correspondence did occur, and that Mr. Best came up here, but when Mr. Best came, Mr. Best was known to the insurance department. We will show you in addition to what Mr. Best has testified to himself that he was one of the compilers of Best's Insurance Report, the Bradstreet of the insurance world. We will show you that the insurance department of Washington considered that any company that Mr. Best would recommend would be above reproach and need not be examined at all without something came up in the future that would show the necessity of examination—in other words, that Mr. Best's recommendation would be a hallmark for such a company; that as to such companies there could be no necessity of an advance fee, nothing at all—they could come in with safety, without question. So Mr. Best was told had the department known that he was behind this company, or that he was interested in this company, or that he was a friend of this company, it would have let the company in without charging it any advance fee for its examination, because the department

considered from Mr. Best's standing in the insurance world that his very recommendation would be almost equal to an examination and the department would not need to concern itself about examining such a company; "and we say to you now that any company you want to recommend to come into the State of Washington need not put up an advance fee, because your recommendation would take the place of such advance fee by reason of the department's knowledge of your honorable life and the admirable integrity of yourself in the insurance world." And that is our answer—will be our answer of the evidence to this charge of not being a high crime, misdemeanor and malfeasance in office—to tell Mr. Best that a company could come in without an advance fee if he represented it, and willingly withdrawing a demand for an advance fee from a company that Mr. Best did recommend.

Article 24, which is the last remaining article upon which evidence has been offered, none having been offered as to 26 excepting the perjury charge, which we have necessarily passed over in chronological statement of the evidence, we charge by the evidence, as already stated to you, and as we will show by the books, as is necessary in showing up the falsity of this perjury charge, that he drew no salary, commissions or anything from the association except flat salary, but that he drew that for two days less than four months. I have already stated to you what the evidence would show in regard to the double charge, the charge of receiving salary at both ends of the line. The portion of this article citing that he received two checks to cover examination charges made of said association, one for \$100.00, the other for \$200.00, which was greatly in excess of expenses incurred in making such examination, I deem it not necessary to meet, for, as I recall, no testimony has been offered on that feature. If there was any, we shall meet it and explain it. The fact that Mr. Schively wrote on November 5th to W. T. Melvin a letter in which he stated the association was one of the most reliable and stable stock companies in the state, we will admit by our evidence is true; but by our evidence we will establish the truthfulness of that statement by Mr. Schively. We will establish by Mr. Schively that he left this company solely by reason of the fact that he saw it was impossible for him to bring the warring factions together or to change any of its policies, though it was in an A No. 1 financial condition. The only rock ahead of it was the need of available assets in money. We will show you that Mr. Schively was aware of the fact that the year before the company had gone along swimmingly, and made all kinds of money notwithstanding, because they had been financed in Spokane by a loan of \$50,000 on these farmers' notes as collateral; and the farmers' notes were as good as wheat when the wheat came in—when the notes were carried over to harvest time. And the company had flourished notwithstanding its policy of notes instead of cash—premium notes instead of cash. Because it had done so, Mr. Schively had every reason to believe at the time he wrote this letter that the same condition of affairs would exist in 1907 and in 1908; and if it did exist, there was no further vulnerable point in this company. We will



show you, as I stated this morning, that it was the pioneer in the field, writing an immense amount of business, making an immense amount of money, taking in an immense number of premium notes; that it was stable, it was the best concern of its kind in the state; it was reasonable to suppose it would go on and make money if no disaster overtook it. We will show you that no disaster would have ever overtaken this company, notwithstanding the peculiar methods of bookkeeping and financing introduced by Mr. Schrock, were it not that in 1907, without waiting upon the hypothecations of their farmers' notes until the harvest came around, creditors fell upon the property and their immediate necessity at that time drove them into the court of bankruptcy, into insolvency proceedings; but later the insolvency proceedings were dismissed out of the court—true, upon the technical grounds that the court had no jurisdiction to appoint a receiver, but we will show you that the company went back into the hands of Mr. Schrock and his associates and went along during that time all right, and that an attempt was made to put it in bankruptcy in the state court before Judge Poindexter; and upon the statement of one of the creditors in Judge Poindexter's court, who sought the receiver, Judge Poindexter refused a receiver because of the insufficiency of the showing to establish an insolvency upon the part of the company. Even then—even after it had had the blackening of the first receivership—it was still strong enough to stay in business; and not until upon a second application, made still later, did it finally get into the hands of a receiver. And all this will be shown for the purpose of establishing that at the time John Schively wrote that letter in November, 1906, he was strictly within the statements of an honest man that the company was a stable company and a good company, and that he believed, as John Schively, it would be a good company to tie to. And thus we leave that job of high crime, misdemeanor and malfeasance in office.

Article 25, the remaining article, is the perjury article which was gone over this morning.

And this, gentlemen, is a somewhat involved and somewhat detailed statement of the evidence that we will produce before you upon this defense. In that connection, I want to say before passing, that we will show in connection with all this that both in the State of Washington and throughout the insurance world your insurance department, beginning before the time of the first charge in these articles up to the present time, has stood among the highest in the insurance world as to efficiency, management, fair treatment and discipline with insurance companies. We will show you that the department during those times has borne and still bears the same reputation among the insurance companies. We will show you that since the passage of the new law that you gave for the operating of this department at your last legislature, the insurance companies have been made to realize and feel the complete grip upon them in the management of their affairs to the benefit of the insuring public in this state.

We will show you in this connection—I had almost forgotten it, and I deem it very important, because in this Senate are sitting several members who were of the committee of the House two years ago that I want to refer to—we will show by Mr. Vanness, if we can get him here, for whom a subpoena has been issued, that he, as chairman, and Messrs. Sumner, Condon, Booth, Piper, Boone, Paulhamus, Paulsen, Minkler, Stevenson, Rosenhaupt, Kennedy and Paulley, as members of the committee two years ago, Mr. Paulhamus acting most of the time as the examiner, had before them Mr. Schively looking for the making of a greater appropriation for the management of the affairs for the insurance department; that at that time those gentlemen had explained to them the charging of this \$200.00 advance fee for examination and the charging of the \$200.00 flat rate for examination, and they were asked for remedial legislation, such legislation as was passed here at your last legislature, and for more appropriations, in order that these examinations could be made; and the statements were made before that committee that these examinations could not be made because of inefficiency and inadequacy of help in the insurance department, and that the result of this examination by the committee at the hands of Senator Paulhamus did not bring any relief in that respect or any increase of the appropriation. This will be shown for the purpose solely of showing that these practices were not secret; they were above board; they were departmental rules, believed to be correct and justified by the law, and respondent was without any guilty purpose, guilty intent or guilty scheme of any kind or character; and for the purpose of showing that they were not matters to be discovered by any investigating committee, but that they were matters of general knowledge throughout the state and of the members of this legislature two years before the legislative committee was appointed. We will show you in this connection that at the assembling of your legislature in 1909, your present insurance laws, which safeguards any of these practices, prevents any of these practices, amplifies what shall be done, puts all money into a fund in your treasury, allows no emolument, remuneration or perquisites of any kind to the insurance department—a good law as it now exists upon your statute book—

By MR. MANAGER EDGE: I think I will have to object again to counsel rambling off as to past legislatures that have no bearing upon any issue in this case, and by the broadest construction of the evidence will not have any bearing in this case.

By MR. ISRAEL: I am stating the very identical language of my answer.

By MR. LEE: Now, if your honor please, I will object at the proper time on that affirmative answer, and at this time we object to any further statements of that kind.

By THE PRESIDING OFFICER: Did you demur to that?

By MR. LEE: No, because we did not want to encumber the record, but at the proper time I will object to it, to that testimony.

By THE PRESIDING OFFICER: You may proceed, Mr. Israel.

BY MR. ISRAEL: The evidence will show you, as claimed in the answer, that this was a departmental rule, and I shall put Assistant Attorney General Lee upon the stand to show that John Schively prepared the original draft of the Miller bill that was afterwards withdrawn by the House and amended and put back and passed as the Miller bill. I think I will show you by the testimony of Mr. Miller that Mr. Schively was constantly after him, requesting him not to let the bill get lost and to see that the bill did not fail to pass—and the bill did pass. And this, gentlemen, is the general outline of the testimony that will be introduced at this time for the purpose of justifying the only verdict that could ever be written at any time as to any one of these articles—the verdict of not guilty.

[A recess was taken for ten minutes.]

BY MR. ISRAEL: If your honor please, while I will attempt in introducing all of the future testimony to keep it in chronological order, nevertheless, one of my witnesses whose testimony only goes to what will be the later proof of the departmental practice, is so situated in his employment in the treasurer's office in Tacoma that it is working a great hardship on him to stay here, and I will ask permission to call him out of order.

BY THE PRESIDING OFFICER: Call your witness.

J. R. Anderson, being a witness called on behalf of the respondent, after having been first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. J. R. Anderson.

Q. Where do you live?

A. City of Tacoma.

Q. What is your business?

A. I am a deputy in the county treasurer's office.

Q. Do you know John H. Schively?

A. I do.

Q. How long have you known him?

A. Well, possibly eight or ten years.

Q. Do you know Sam H. Nichols, who was secretary of state?

A. Yes, sir.

Q. How long have you known Mr. Nichols?

A. About four or five years, I suppose.

Q. I will ask you whether you ever had occasion to make application to the insurance department of the State of Washington for the admission of an insurance company?

BY MR. LEE: Now, if your honor please, we object to that as immaterial and incompetent to any of the articles of impeachment in any way. It is in no way material, and I ask that my objection be sustained unless the materiality be shown.

BY THE PRESIDING OFFICER: I will hear from you, Mr. Israel, as to the materiality.

BY MR. ISRAEL: The materiality of this evidence is under the affirm-

ative allegation of the complaint that the practice of charging a flat rate of \$200 for the admission in advance, for the admission, charging a rate of \$200 for the examination of a company coming into the State of Washington was not the scheme of the respondent, John Schively, but was the general rule of practice and a rule adopted and put in force by his superior in the office of the insurance commissioner, and in accordance with that rule and with that practice. This defense is not only made, but the materiality and competency of this evidence, your honor, has been recognized in this trial, has already been recognized in this trial by the permitting of the reading of depositions not directed to any of these articles of impeachment, but to similar transactions, for the purpose, under the law as laid down by the books, that such evidence, under the exception to the general rule of evidence making such evidence competent when it is necessary to prove general unlawful scheme and purpose to defraud. The materiality of the evidence goes to the establishing that instead of its being an unlawful scheme and purpose of the respondent in this case to defraud, that it was the carrying out of the practice and departmental rule of his superior in the office in which he was engaged.

By MR. LEE: At this time and on behalf of the board of managers we object to the introduction of this or any similar evidence, whether it be offered as an affirmative defense or any other defense. I object to it for these reasons. The only issues before this Senate are these: Did J. H. Schively do the things with which he is charged in the articles of impeachment or did he not? If he did do these things, was it or was it not extortion? If it was extortion, is it or is it not impeachable? I care not what Sam H. Nichols did, or what the departmental practice was. I say that the testimony does not in any way concern any article of impeachment, and I challenge counsel to show me how it does. And I submit to your honor, if we are going to take up the time of this Senate in proving what the departmental practice was that was enforced for the last generation, where will we get off? Counsel has stubbornly fought for the rules of evidence which obtain in criminal trials. You see what he is trying to do with this Senate. Counsel knows he is beyond the range and field of evidence. If he is willing to adopt the theory adopted by the board of managers, then perhaps he might be given the latitude, but I say it is not relevant or material or has not the remotest bearing upon these articles charged in these articles of impeachment. How can anything that transpired four or five or six years ago have any bearing upon an alleged crime committed in the last two years? And I submit that it is highly incompetent, irrelevant, and immaterial and entirely foreign to the issues before the bar of the Senate. I again repeat and ask your honor to give us a ruling upon it at this time, and we have reserved the right to object at this time and counsel knows it is our right, and any well-informed lawyer knows that we challenge this evidence not as to its sufficiency but as to its character and as to its competency; and I again call the attention of the chair and the Senate to the issues, which are these: Did Schively

commit the offenses alleged in the articles of impeachment? Did he or did he not? If he did, is it a crime? That is for this Senate to determine; and if it is a crime, is it an impeachable crime? And these, if the court please, are the only three issues before this Senate.

By MR. ISRAEL: The issues before this Senate upon this class of the articles of impeachment are denominated by the gentleman as extortion. It has long been conceded by the eminent counsel in the attorney general's office as their reasons for the impeachment proceeding, that the facts under which these moneys were paid were not a violation of any criminal statutes of the state, that there is no statute on the books that these parties could find that would be sufficient to sustain a criminal charge of extortion. If there be an extortion at all, it is the moral extortion of assuming to get the possession in specified cases of a different amount of money than would be paid by others for the same services in the same capacity—in other words, a guilty intent, a guilty scheme and purpose under an isolated or series of isolated instances to get money that would not be charged to some one else. Now, while that might be possible as to an individual in or out of office, or might be possible in an inferior or a superior, it would not be possible in an inferior where he was operating under a fixed and departmental rule of his superior. The element of individual criminal intent, individual scheme and purpose, is destroyed. That is part of the affirmative defense made to these articles, and part and parcel of this respondent's defense in this matter. We have heard from the beginning here that moral obliquity was as reprehensible as legal obliquity. Now they would change their position and get back to that which is more technical than the law upon which they have been attempting to try this case and violate the law of criminal intent, though the law says you must prove intent before you can prove the crime, and I submit that this testimony is relevant and should be considered and allowed to be considered by this Senate in determining whether or not this man committed any misdemeanor or felony or malfeasance in what he did under the circumstances controlling him when he did it; and in order to know the circumstances under which he did it, it is necessary to know what the general practice, if there was any, was at the time—not at some remote time, but at the time obtaining in the office in which he was and in which the superior head had the guiding and ordering.

By MR. LEE: From the very beginning of this trial the distinguished gentleman who represents the respondent has attempted to force this board of managers to the position that in order to show Mr. Schively was guilty of the crime of extortion, we had to prove intent, and we have just as insistently and vigorously taken the position, and continue to take it in spite of his ingenious ramblings, that a man who takes an unlawful fee under color of public office is guilty—if we don't show an intent. When the proper time comes, we will present to this Senate authorities unanimously, and without exception, showing that intent is not necessary; that the mere collection of the fee unlawfully under color of public office constitutes the crime of extortion. So much on that part

of counsel's argument, which is not at all in point. Now, come back to the question in issue. What do we care if Sam Nichols charged nine hundred for the examination of a company? John Schively, as deputy insurance commissioner, under the powers and privileges of his superior officer, could receive remittances, issue and revoke licenses, and make examinations—

By MR. ISRAEL: When did you show that?

By MR. LEE: In our argument, and up to this time it has not been successfully met; and furthermore, the statutes of the State of Washington, which were read to the Senate, say that when a man takes more fees than he is by law entitled to, under the color of public office, that constitutes the crime of extortion. We contend that at this time this is not competent testimony that is offered. It is offered for no other purpose than to encumber the record in this case and fog the issues. Either Schively did or did not take this money; he is either guilty or he is not guilty of the offense; he is either impeachable for the offense or he is not. Those are the only three issues before the bar of this Senate. I won't quote any more authorities on this, *first*, because I do not care to take the time of the Senate, and, *second*, I do not think it is legitimate reply argument; but I will say that Massachusetts and Illinois authorities have held that even where an established custom and practice, that even where illegal fees are extorted, in advance, it is no excuse for the defense to say that their predecessors have done it. Neither can this defendant in his defense say that when a man receives an order from his superior officer, when that order is contrary to the law, and the statutes of the state, "My superior told me to do it." That is just as elementary as the many other questions we have to discuss here. It is for the Senate to say that—when the time comes for them to vote and render its judgment—whether or not Schively committed this offense, and whether, if he did commit the offense, it is an impeachable offense. In this connection I challenge the attention of the Senate to Pierce's Code, Sec. 5621, which was the law during Mr. Schively's tenure in office. I only quote that portion which is directly in point here. "The commissioner may, whenever he deems it necessary, either in person or by his deputy, repair to the general office of such non-resident organization, wherever the same may be, and make an examination"—and there is another section of the code stating that the deputy insurance commissioner is given the rights, powers and privileges of his superior officer—

By MR. ISRAEL: When?

By MR. LEE: In the absence of or through the inability of the insurance commissioner to do so. Now, my distinguished friend, [*addressing Mr. Israel*] you have asked for a liberal construction from this Senate in reading the statutes of this state today. What does inability mean—sick—on his deathbed? No, sir; it means when legitimately engaged in the performance of his duties as secretary of state; that when these companies want to come in, and his duties as secretary of state prevent him, his deputy can take care of them. I have confined

my remarks simply to the construction laid down by counsel, but I submit to your honor that in summing it all up it expresses the rule and the law—the only question plainly before this Senate is, did or did not Mr. Schively do these things? Did or did not he commit, or is he guilty of this crime? If he is guilty of this crime, is or is it not impeachable? And everything else, I submit, as a pure elementary proposition of law, is immaterial, incompetent and irrelevant.

BY THE PRESIDING OFFICER: Will Senators Knickerbocker and Rosenhaupt come to the chair.

BY THE PRESIDING OFFICER: The determination of this challenge of the testimony of this witness is very far-reaching in its effect on a great many questions which appear to me would be decisive of the admissibility of a great deal of testimony which is proposed. On the part of the defendant, it is alleged, sought to be proven, according to the statement of counsel, that a departmental order was made by the secretary of state under the advice of the then acting attorney general; that the respondent was acting as deputy and in a subordinate position, and that in order to render this offense impeachable before this bar the intent is an element which must be shown. The testimony which is offered at this time does not bear directly upon that question, and to my mind could not be admitted unless it were followed by such proof as would show that the department of insurance, acting under its legal advisor, had promulgated a rule which would substantially have the force of a law.

BY MR. ISRAEL: I said I was putting this witness on out of order. It was my intention to connect up my testimony with everything I stated in my opening statement.

BY THE PRESIDING OFFICER: I understand. This testimony is offered at this time admittedly out of order, and unless it is followed by testimony such as I have indicated, such as counsel for respondent claims can be shown, it will be stricken. What was the question?

BY MR. ISRAEL: The question was, did you have reason to apply for the examination of a company for the purpose of verifying its report and doing business in the State of Washington?

BY THE PRESIDING OFFICER: That was a preliminary question?

BY MR. ISRAEL: Yes.

BY THE PRESIDING OFFICER: The witness may answer that and you may proceed to the next question.

A. I was, if your honor please—I would have to qualify that, because I would have to answer “no” to that question.

Q. Did you ever have occasion to have any dealings with the insurance department relative to the examination of an insurance company?

A. Yes, sir.

Q. Who was the person that you had the first communication with?

A. I would state that I cannot give dates. It was about two or three years ago. Mr. Schively met me on the street, and said, “Mr. Anderson, the order you represent has been doing business in the state for a number of years, and has never been examined, and it will be

necessary to have the affairs of your order examined." I told him, "All right, Mr. Schively; our books are open, and we are only too glad to have our order and its affairs examined." Mr. Schively then told me—

BY MR. LEE: What question is all of this testimony in response to? Is this responsive?

BY THE PRESIDING OFFICER: It is not responsive.

BY MR. ISRAEL: Q. Just wait a moment, Mr. Anderson. Detail now all that occurred, if anything, between yourself and John Schively and Samuel H. Nichols regarding the charge for such examination?

BY MR. LEE: I object to that for the same reason—for the reason that it does not bear upon any of these articles of impeachment, and it does not in any way concern the articles of the case.

BY THE PRESIDING OFFICER: Have you not raised the point and offered proof to show a fixed scheme or purpose on the part of the department—

BY MR. LEE: Not a fixed scheme or purpose on the part of the department. Every deposition that was offered in this case by the managers was to the effect that J. H. Schively made these representations to these companies and received the money from these companies and entered these companies, and in no case made an examination of these companies. Now—

BY MR. ISRAEL: And you have attempted to prove a fixed scheme and purpose on the part of Schively—

BY MR. LEE: Certainly, but not on the part of Mr. Nichols, and not a departmental policy or practice, but on the part of Schively acting as deputy insurance commissioner of this state, and under color of public office. Now, what purpose can be served here by showing what dealings this man had with Sam Nichols?

BY THE PRESIDING OFFICER: And all of those depositions were admitted for the sole purpose of either showing intent on the part of the defendant, or a fixed scheme and purpose, implying intent?

BY MR. LEE: Or negating the knowledge of mistake.

BY THE PRESIDING OFFICER: Or negating the knowledge of mistake; and there were some eleven depositions introduced for that purpose. You were endeavoring to show a fixed scheme on the part of Mr. Schively by a series of similar acts. Now, what is the purpose of this testimony?

BY MR. ISRAEL: To show it was not Mr. Schively's fixed scheme, but a departmental rule.

BY MR. LEE: If Mr. Israel wants to take the stand, we will cross-examine him, but he has no right to sit here now and offer his statements of what it was or what it was not.

BY MR. ISRAEL: [*Continuing*] Of course, your honor, with the other testimony that clusters about this—

BY MR. LEE: Mr. President, is there anything else before the house—



BY THE PRESIDING OFFICER: Just a moment; we are consulting here.

BY MR. LEE: Counsel was talking down here and I did not know what was before the house.

BY THE PRESIDING OFFICER: I will rule in this matter that this testimony may be gone into merely as a tentative proposition and will be stricken unless it be followed up as indicated by counsel for respondent, showing a departmental rule, under the instruction of the legal authority of the department, the attorney general.

Q. Now, proceed and detail what occurred with Mr. Schively and Mr. Sam Nichols? Give us the whole story, Mr. Anderson.

A. When I told Mr. Schively that we were only too glad to, and anxious to have our order examined, he then said, "Your order has its headquarters in Toledo, Ohio." I told him, "Yes, it is in Toledo, Ohio," and he said, "Well, there would be a charge for going back there to examine that order," and I asked him how much, and he said four hundred dollars; and I said, "Mr. Schively, we will never pay that. I am the state representative of the order"—

BY MR. LEE: I object to that on the ground that it is immaterial.

BY MR. ISRAEL: Q. Yes, just state what occurred, Mr. Anderson.

A. Mr. Schively said that would be the charge to go to Toledo, Ohio, and examine the affairs of the order, and I told him that we simply would not pay it. I said, "I will advise against it," and he left, and in a week or ten days, I met him again—

Q. Did he say anything at that time about his inability to make any change in that?

A. I do not know that he did at the first time. The second time he asked me about it I told him that I would not pay four hundred dollars, and I would recommend against it—that is at the second time—and he said, "Well, Mr. Anderson, that is the best I can do for you. You will have to see Mr. Nichols," and I told him I could not go over to see Mr. Nichols. He then told me that Mr. Nichols would be at the Donnelly hotel within the next week or ten days, and that he would call me up, and that whatever arrangements I could make with Sam, as he called him, would be satisfactory to him. It may have been a week or ten days after that Mr. Nichols came to Tacoma and called me up, and I went down and met him at the Donnelly hotel, and he then told me that the order should be examined. I told him we were perfectly willing, but would not agree to that price—if the price was four hundred dollars. I said, "It is no use, Mr. Nichols; I will recommend against it, and we will fight it"; and then he proposed to compromise to three hundred dollars, and I objected to that, and finally he said two hundred dollars. I told Mr. Nichols that I would agree to two hundred dollars upon one condition, and that is when he got back to Olympia to his office that he would write me a letter stating that our order had to be examined under the laws of the state, and that he should put the price in it, and that I would then take it to the senate of our supreme body and would have an order passed providing for the payment of this two hundred dollars for the examination. Nichols, in the course of three or four days or a week, wrote me a letter, stating these facts just as I required them, and I took his letter and went back to the supreme body and had the appropriation passed in the senate of the National Union for the examination of our order.

Q. Was it made?

A. It was made.

*Cross-Examination—*

By MR. LEE: Q. What is your occupation at the present time?

A. Deputy in the county treasurer's office of Pierce county.

Q. Were you subpoenaed here?

A. Yes, on Wednesday night.

Q. Did you talk with Mr. Schively or Mr. Israel before you took the stand?

A. Very little.

Q. How much, if any?

A. About my testimony, nothing.

Q. About other matters?

A. Just simply a common, ordinary talk.

Q. Did they know anything about what your testimony would be until you got on the stand here?

A. I think Mr. Schively did. I told Mr. Madge the other day when he came over to see me.

Q. Did you tell Mr. Madge what you were going to testify in this case?

A. No, sir.

Q. What did you tell him about the testimony?

A. He said our order had been examined and we had paid a fee, and that some one was going to subpoena us; I did not know at the time who he was.

Q. Who is Mr. Madge?

A. I believe he is in one of the departments here.

Q. What department?

A. I think he is in the insurance department.

Q. Do you know whether or not he is?

A. No, sir; I would not say so.

Q. At the time you were talking to him did you know who he was?

A. Yes, I knew it was Mr. Madge.

Q. Did you not know he was deputy insurance commissioner at the present time?

A. I did not know, and I do not know now, he is a deputy insurance commissioner.

Q. Do you know whether or not Mr. Schively knew what you intended to testify before you took the stand?

A. He might have; I don't know that he did.

Q. Did you have any talk with him about it?

A. Yes, but I did not tell what I was going to testify.

Q. Did Mr. Israel know what you were going to testify to?

A. Why, he even did not know how to frame his question a while ago. That shows you.

Q. Did anybody frame your questions or answers?

A. No, sir; I do not recall anything of that kind.

Q. When did you say you first had the transaction with Mr. Schively?

A. That was on the street; I talked with him on the street.

Q. He told you what the charge would be?

A. Yes, he said it would be four hundred dollars.

Q. Did he say at that time they had a sliding scale?

A. No, sir.

Q. That it would be no more and no less than four hundred dollars?

A. He said it was worth four hundred dollars to go to Toledo to examine our order.

Q. Did he say whether or not he would go if the money was paid to him?

A. He said he would go. He said if four hundred dollars was paid to him, he would go to Toledo and examine the company. That is not the way he said it. He said the charge for going to Toledo was four hundred dollars.

Q. But you said a moment ago he was going?

A. He did the examining.

Q. In other words, the entire transaction was to be handled through Mr. Schively, if the four hundred dollars was paid?

A. You can put it that way if you want to. I am not saying that. He said he would charge—that the charge for examining our order would be four hundred dollars for going to Toledo.

Q. And if the amount were paid, he would go to Toledo?

A. Yes.

Q. In other words, if the transaction were completed, it would be by him?

A. Yes.

Q. He never said anything about Nichols the first time?

A. No, sir.

Q. Nichols was brought in and sent the letter when he found that you were stubborn and wouldn't pay that amount?

A. On the second visit, yes.

Q. Do you know whether or not the examination was made?

A. The secretary of the order reported to me that the examination had been made.

Q. Do you know who made the examination?

A. He said Schively had.

Q. Mr. Schively finally did go to Toledo and finally made the examination in person?

A. Yes.

Q. Was Nichols there?

A. I do not know as he was there.

Q. So far as you know, was he there?

A. I have no knowledge of his being there.

Q. Now, it never came directly to your knowledge that Mr. Schively made the examination?

A. No, sir; but the secretary of the senate reported that Mr. Schively had been there and made the examination.

Q. Did he mention any other names other than Schively?

A. No, sir.

Q. The money was paid to Schively?

A. The secretary so said.

Q. The two hundred dollars?

A. Yes, sir.

Q. So that the entire transaction was through, with and by Schively, wasn't it, with the exception of this conversation with Mr. Nichols?

A. No, sir; on the strength of the letter, the appropriation was made for the examination.

Q. Do you know where that letter is?

A. I wrote for it as soon as I was subpoenaed, and it has not had time to get back yet.

Q. When was the letter written?

A. About three years ago.

Q. How do you remember the contents of it?

A. Because I stated what the contents should be before the letter was written.

Q. Have you had any occasion to refresh your recollection upon this letter?

A. No, sir.

Q. You are perfectly sure at this time as to what it contained?

A. Yes, sir.

Q. Who asked you to write for that letter?

A. Nobody asked me to write for that letter. I attend to the order's business in this state, and have for the last seventeen years.

Q. Did you write a letter after you were subpoenaed?

A. What letter?

Q. The letter regarding this transaction?

A. Immediately after I ascertained from Mr. Madge I would be subpoenaed, I wrote for it.

Q. So that after Mr. Madge, the deputy insurance commissioner of this state, informed you that you would be subpoenaed, then you got together all this data, did you?

A. No, sir.

Q. Or you attempted to?

A. No, I attempted nothing.

Q. You attempted to get the letter, didn't you?

A. I wrote for the letter. There was no attempt about it. I did it.

[*Witness excused.*]

John H. Schively, the respondent herein, produced as a witness for and on his own behalf, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. John H. Schively.

Q. How old are you?

A. Fifty years of age.

Q. Where do you reside?

A. In Olympia.

Q. What is your business?

A. I am state insurance commissioner.

Q. How long have you been occupying that office?

A. Since the 13th of January of the present year.

Q. When were you elected to it?

A. On the day in November which was the general election day of the state in 1908.

Q. Have you any family?

A. I have a wife and five children.

Q. Where are your children? Begin with the whereabouts of the elder.

A. My oldest is a boy, at present a cadet at West Point.

Q. The next one?

A. My second is a daughter, employed at present as a stenographer in the insurance department.

Q. The third one?

A. My third is a daughter, at present spending her summer vacation at home, a student at the State University.

Q. Your fourth?

A. My fourth is a boy, born in the state, at present working with a surveying crew in Pierce county.

Q. Your fifth?

A. My fifth is a boy at home working for the contractor fixing the streets of Olympia.

Q. Is your wife living?

A. My wife is living, in Olympia.

Q. How long have you lived in Olympia?

A. Since about the 11th day of January, 1901.

Q. What was the occasion of taking up your residence in Olympia?

A. I was appointed deputy insurance commissioner by Sam H. Nichols.

Q. What office did Sam H. Nichols occupy at that time?

A. He was secretary of state and *ex-officio* insurance commissioner.

Q. How long were you deputy insurance commissioner under Sam H. Nichols?

A. A period of eight years and the difference of days between the time of appointment at that time and the going into effect of the present law, probably two days. From 1901, January 11th, until January 13th, 1909.

Q. Prior to your appointment to the office of deputy insurance commissioner, had you held any other offices in the State of Washington?

A. I was once a member of the legislature of this state, if that is a public office.

Q. What year?

A. 1895.

Q. Have you occupied any political offices?

A. I was the chairman of the republican state central committee in the campaign of 1898 and succeeded myself in the campaign that followed, in 1900.

Q. Mr. Schively, I wish you would explain to the senators the procedure that is gone through with an insurance company that desires to enter the State of Washington for the purpose of doing business.

By MR. LEE: What time, Mr. Israel, present or—

Q. Well, within the times of these articles of impeachment—within the time we will say from 1906 until the passing of the Miller bill in 1909.

A. Ordinarily a company desiring to enter to the transaction of business to this state sends a letter to the department and asks for a copy of the insurance laws of the state. Succeeding this, the company writes for the appropriate blanks and other information required. The blanks are sent to the company with a letter of instruction.

Q. What do these blanks consist of and this letter of instruction, in a general way?

A. These blanks consist of a large blank statement form prepared by the convention of insurance commissioners of the United States, asking questions concerning the capital stock, the resources, the income, the disbursements and all other matters as to the financial standing of the company, its assets, its liabilities, its resources, how these assets are invested.

Q. What is covered?—

A. Further than that, I beg your pardon, I have only answered half of your question. Further than that, a circular letter is sent giving information as to the fact that certified copies of the articles of incorporation are also required.

Q. What is the contents of this pamphlet of insurance laws of which you speak?

A. Covers every insurance law of the state, so far as the department knows.

Q. Is there encompassed in this insurance pamphlet the section of the insurance law defining the charges and payment that is to be made for examination of companies; does that law also go in the pamphlet?

A. Yes, sir.

Q. Before taking up, Mr. Schively, the articles of impeachment here *seriatim*, and for the purpose of getting behind us involved details of article 25, I am going to direct your attention now away from the insurance department and to the Live Stock Company for the purpose of covering articles 24 and 25, article 24 being directed to your having received certain examination fees while a member of the corporation, in the person of deputy insurance commissioner, and having received pay from both the secretary of state's office and the company, and article 25, in which it is alleged that you committed perjury before the grand jury in Spokane county in swearing that you were working for the company upon a salary and not upon a commission; that you did not purchase the interests of one Ward in the company and did not issue your notes to him in payment for such purpose, and, in order that we may understand the entire transaction, I will ask you when you first became acquainted with the Pacific Live Stock Association as a company?

A. When it was organized, some time in the year 1905, to the best of my memory.

Q. Do you know under what law it was organized?

A. It was organized under the law which I think was passed at the 1905 session of the legislature.

Q. Do you know the person who was instrumental in the passage of that act?

A. It was prepared, I think, by Mr. Murray.

Q. Who was Mr. Murray?

A. Mr. Murray was Charles A. Murray, at that time assistant counsel of the Great Northern railroad in the city of Spokane.

Q. Did he have any connection with the Pacific Live Stock Company after it was organized?

A. I think he acted in the capacity of attorney—in fact, I know he did.

Q. Who was the first officer of the association that you became acquainted with after it was organized?

A. To the best of my memory, Mr. Ward, the president, and Mr. Hilliker, the manager. I think I met Mr. and Mrs. Ward at the same time, though that I am not positive.

Q. Do you remember now when that was?

A. It was about the time—shortly after this law was passed for the express purpose of having this company organized. This law was passed for the express purpose of having this company organized. They endeavored to organize this company before the law was passed. A controversy arose between Mr. Nichols and the attorney general, at that time, I think—General Stratton—on this question; there was no law covering a mutual company of that character.

Q. Talk out to that door, Mr. Schively.

A. I think they are all hearing what I say. There was no law of that character allowing the company to operate. They went to the secretary of state, as the secretary of state, and took out a corporation license, and under that corporation license they were acting as an insurance company; and in order to obviate this difficulty, Mr. Murray, at the request of the people interested in the Pacific Live Stock Association, prepared this bill and had it introduced and passed by that legislature. Immediately after the passage of the bill the company or association was organized, and immediately began the transaction of business. It was then when I became acquainted, and during their presence at the legislature, in the effort to have this measure pass, that I became acquainted with them.

Q. Now, from thence on, how intimate was your associations with the affairs of the company, otherwise than as a state official—insurance commissioner?

A. It was quite intimate officially, personally and socially, with every one of them. I mean by that that officially I was aiding them in the organization of this association. It was the first association of the kind in the state.

Q. I now want to direct your attention to respondent's exhibit "A" to article 25—No. A1—which is a letter identified by the witness, Ward, as being in the handwriting of his wife and sent to you at Olympia from Yuma—handing you the letter at this time, Mr. Schively, simply for the purpose of directing your recollection to the incident referred to therein, the appointment of one Hobson as manager of this Live Stock Association, in order that you may tell us in a chronological way what occurred after your first meeting with Mr. Ward in his relation to the Live Stock Company that led up to the writing of this letter, first asking you to state whether or not at the time this letter was written you were personally acquainted with Mr. Schrock?

A. I was.

Q. Whether up to that time you had had any business dealings of any kind with Mr. Schrock—at the time this letter was written?

A. This letter is dated April 14th, 1906. Mr. Schrock was not an original trustee. Just at what time he came into the organization or association, it is impossible for me to say.

Q. But up to the time this letter was written, were you in any way interested in Schrock or his matters?

A. In no way personally interested.

Q. Now then, with that preliminary, I want you to begin at your meeting with Mr. Ward and I want you to tell the senators if there were any difficulties between he and any one else in the Live Stock Company and the character of the difficulties—or the occasion rather of the difficulties—the occasion of the difficulties that led up to his writing that letter to you?

By MR. MANAGER EDGE: If the court please, the question of whether or not there were any difficulties between Mr. Ward and Mr. Schrock is not a question that is material to any issue raised by the pleadings here. It is evidence upon a collateral issue that is not presented.

[*Question read.*]

By THE PRESIDING OFFICER: Is that a preliminary question?

By MR. ISRAEL: No, this is a question now as to what it was. This question, your honor, is directed to the impeachment of the testimony of Ward that John Schively solicited him to use his offices to get Schively in as trustee, and that Schively was attempting to become a

member of the association in the fall of 1905 and spring of 1906. This is in direct connection; this is a furtherance of the impeachment that this letter made of the witness on the stand—of his entire story of what lead up to John Schively going into the Live Stock Association, so far as he (Ward) was concerned.

BY THE PRESIDING OFFICER: Brought out on direct examination?

BY MR. MANAGER EDGE: No, it was not.

BY MR. ISRAEL: Oh, yes.

BY MR. MANAGER EDGE: It was brought out on cross-examination of Mr. Ward by Mr. Israel. Furthermore, if the court please, it is a well known rule of law that only upon material matters can a witness be impeached. Now, this is a matter that, if it was called out, was called out by cross-examination of counsel—was called out over my objection—when he was going into matters that were foreign and had nothing to do with the issue, and his impeachment upon this evidence, if it could be used, would be an impeachment as to an immaterial matter, which is not permissible under the law of any court.

BY THE PRESIDING OFFICER: My memory is that that was brought out on cross-examination.

BY MR. ISRAEL: The court is in error and counsel forgets the testimony. Ward was put upon the witness stand, your honor, for the purpose of proving that John Schively approached him with a proposition to sell out his interests to Schively in the Pacific Live Stock Association, and Ward testified in that direct testimony that Schively first approached him in Portland the fall before, and that was all direct testimony. Now, I impeached Ward with this letter as to that statement. I am now going to impeach and discredit him by further letters and testimony in that statement.

BY THE PRESIDING OFFICER: Is that a correct statement?

BY MR. MANAGER EDGE: If the court desires to hear from me on the subject, I will simply say that my recollection of the testimony of Ward was that the talk in Portland was very lightly touched upon, and he simply stated by way of preliminary that they had some talk in Portland some months before. He didn't fix it as the fall, as stated by counsel, if my recollection is correct, and passed immediately to the transaction in Spokane, where the deal was consummated and carried out. There was not two minutes of the witness' testimony preceding that touching upon the consummation of the deal in Spokane; and if there was anything of this character brought out, it was brought out by the cross-examination of counsel upon an immaterial matter and upon which he will not be permitted, or should not, under the rules of law, to impeach.

BY MR. ISRAEL: Your honor, the very purpose of the question to Ward was to show an overweening desire of Schively to buy him out. Starting with a talk in Portland of several months before and the consummation in Spokane; that is direct testimony.

BY MR. MANAGER EDGE: No overweening desire by anybody—I was simply stating what the conversation was.



BY MR. ISRAEL: It is direct testimony. He testified that Mr. Schively entered into a contract with him to buy his interest in the Live Stock company in Spokane, which was consummated on the 10th of July, but that he had first approached him in Portland several months or the fall before. Now, that leads up to the testimony that Schively had started in the fall before to drive him out.

BY MR. MANAGER EDGE: No, it did not.

BY THE PRESIDING OFFICER: We will examine the record to see whether it is.

BY MR. MANAGER EDGE: It was admittedly called out on cross-examination.

BY MR. ISRAEL: Oh, I went into it on cross-examination and examined him and pulled the letter out, but I never would have asked him if it hadn't come out on his examination in chief first.

BY MR. MANAGER EDGE: If counsel denies or tends to show by this witness that there was not any conversation in Portland—

BY MR. ISRAEL: That is it, exactly—exactly.

BY MR. MANAGER EDGE: Then this matter is entirely immaterial.

BY THE PRESIDING OFFICER: I am going to wait for the record; as to what the record is, my memory sustains the contention of the manager.

BY MR. MANAGER EDGE: I am willing to take the judgment of the court at any time—yes, quite willing—when we are in dispute as to what the record shows. I don't think as a court of law we should go back over it. I am willing to submit it to the recollection of the presiding officer any time—any of these preliminary questions—to save time.

BY THE PRESIDING OFFICER: If the prosecution of the case went into this matter, the testimony would be entirely relevant; otherwise, of course, it would not be. We will send for the record. Can you take up some other branch of the matter?

BY MR. ISRAEL: No, this is a beginning of a perjury charge, your honor. I would like to get my copy of the record. The record is all at my home. I thought I could turn to it probably more readily if I had mine than the stenographers could.

BY THE PRESIDING OFFICER: We will take a recess for five minutes until we can see the record.

BY THE PRESIDING OFFICER: I find that I was in error in regard to this matter—that the managers in their opening statement went into this, and stated their theory in this case to the effect that Schively met Ward first down at Portland and intimated to Ward that he would like to become a member of this company. And Mr. Ward in his direct testimony testified, "I had some conversation in Portland in regard to his expressing his desire to go into the company, as one of the officers of the company."

BY MR. ISRAEL: Mr. Reporter, you may read the question.

Q. Now, then with that preliminary, I want you to begin with your meeting with Mr. Ward; I want you to tell the senators if there were any difficulties between he and any one else in the Live Stock company and the character of the difficulties—or the occasion, rather, of the difficulties—the occasion of the difficulties that led up to his writing that letter to you. And I will add, what, if anything, you were attempting to help Mr. Ward to do at the time referred to in the question?

A. It is difficult to answer that question in one respect, and that is with respect to the dates. I don't remember when I first met Mr. Ward, or when I first met Mr. Schrock, or any of these gentlemen.

Q. Well, I understand that you met Ward before you met Schrock?

A. That is my memory.

Q. And I will ask you who was manager when you met Ward?

A. Mr. Hilliker.

Q. And I will ask you how long Mr. Hilliker was manager after that?

A. Not very long.

Q. What was the occasion of Schrock succeeding him?

A. My memory is that Mr. Schrock succeeded Mr. Hilliker, but I don't know even that, as the absolute fact, because I am not certain that Mr. Hilliker was a trustee.

Q. You mean manager?

A. Manager. Apart from the exact date and the month, the facts are as follows—

Q. That is what I want, the facts?

A. At one time, in the early history of the association, a difference of opinion originated in the board of trustees, and with respect to the—

BY MR. MANAGER EDGE: Are you testifying from your own knowledge now?

A. From my absolute knowledge; I was present and will detail the incidents.

BY THE PRESIDING OFFICER: Proceed.

A. At some time in the early history of this association a difficulty arose between the trustees and the managers or the executive officers of the Live Stock Association. The first actual memory that I have of the difficulty was upon one occasion I was present in Spokane and went to the office of the Pacific Live Stock Association. Whether that was for the purpose of examining the association or not, I don't know, but I was present in the office of the Pacific Live Stock Association, and Mr. and Mrs. Ward came to me to tell me that certain things were being done, which to their minds were irregular, and the fact alluded to by counsel this morning was mentioned. It is not necessary to go into that—

BY MR. ISRAEL: No, it is not necessary to go into that. There was some trouble between Mrs. Ward and the stenographer of the manager.

A. Mrs. Ward had some grievance.

Q. Well, never mind the grievance; there was some trouble?

A. There was some trouble. I had been longer acquainted with Mrs. and Mr. Ward than with the others, more intimately acquainted, and while I was in a measure a go-between for these several conflicting parties, my sympathies were with Mr. and Mrs. Ward. Mr. Ward had devoted himself—

Q. Well, never mind about that; your sympathies were with them?

A. Well, there was a discussion one way and the other. One side would consult with me and the other side would consult with me, and I endeavored as best I could to be the peacemaker, until Mr. Ward was taken ill, and found it necessary to go to Arizona.

Q. Now, was Mr. Overton at that time still manager—Hilliker, I should say?

A. To the best of my present memory.

Q. Well, go on.

A. But all of this time Mr. Schrock was in the association. Whether Mr. Hilliker had been supplanted as manager or not, it is impossible for me to say, but I think Mr. Schrock was managing the matter, because somewhere in this I had examined the company, and I think Mr. Schrock was present at that examination.

Q. Now, prior to his going to Arizona—let me refresh your recollection—prior to his going to Arizona, had there been any conversation with you and Ward over his dissatisfaction with Schrock?

A. Every conversation at this time was of dissatisfaction with Mr. Schrock, and the other members of the board of trustees, as shown in this letter.

Q. Now, I will challenge your recollection further. Before you received this letter don't you remember having received a letter from any one else, that you sent to Mr. Ward in Arizona, which was returned in this letter, as stated?

A. Mr. Ward had been writing and talking to me about a Mr. Hobson, somewhere in Oregon.

Q. What was Ward's and your correspondence over Hobson about?

A. Mr. Ward was very anxious to have some one else in as manager of the Pacific Live Stock Association.

Q. Than whom?

A. Than Mr. Schrock, and his influence on the board.

Q. Now, I will ask you to look at Defendant's Identification B to Article 25, and ask you if you ever saw that letter before?

A. This is a letter I received from Mr. Hobson, in response to one which I had written to him at the request of Mr. Ward.

Q. What did you do with that letter; did you send that letter to Mr. Ward?

A. I think I forwarded this letter to Mr. Ward and requested him to return this letter to me.

Q. Is that the letter referred to in the Ward letter?

A. That is the letter referred to in the Ward letter—this is the letter referred to in the Ward letter.

BY MR. ISRAEL: I will offer this letter in evidence now.

BY MR. MANAGER EDGE: If the court please, I don't think the witness Ward—if this is sought to impeach Ward, I don't think it should be attempted by a letter written by somebody else to Mr. Schively. That letter purports to be written to Mr. Schively by a Mr. Hobson, and in what way that could be permitted to impeach Ward's testimony, I don't understand. Now, in the next place, if the court please, it seems to me we are getting far beyond the merits or the questions that should be testified to in this case. The question here is whether or not Schively and Ward made an agreement. Now, they hire employees—had several in their employ all the time. The fact that they had correspondence about somebody that might take a position with

that company has absolutely no bearing on the real question as between these two men, whether or not they did or did not make an agreement. If we are going off on collateral issues and correspondence outside the record touching every circumstance that is in any way connected with this company, we will have correspondence here so voluminous that it will be absolutely impossible for the defendant to understand anything about it. I think we should get right down to the merits of this case right now, and whether or not there was an agreement between Ward and Schively, and that is the only question. What they did with reference to somebody else taking a position in the company, and whom I understand never did, seems to me to be in no way material, and that is what that correspondence seems to be offered for. It certainly does not bind Ward.

BY THE PRESIDING OFFICER: I think it is plainly admissible, and I think it is the essence of this case to show the relations with Mr. Ward—with the other members of that company, as indicating the very essential question as to whether he took the initiative in securing the services of Schively, and as tending to show whether Mr. Schively even signed those notes.

BY MR. ISRAEL: That is my idea.

BY MR. MANAGER EDGE: Well, does the admissibility of those letters prove the signature of those notes? If it doesn't, I fail to understand the materiality. However, if the court believes it will enlighten the Senate, I will withdraw my objection.

BY THE PRESIDING OFFICER: It may go in.

[Marked "Article 25—Defendant's Exhibit B."]

BY MR. ISRAEL:

The Dalles, Oreg., 3-23-06. Mr. J. H. Schively, Olympia, Wash.: Dear Sir—I acknowledge receipt of your favor of the 20th. In reply, I have been advised by Mr. Ward, whom I personally met in The Dalles a short time ago, that I might expect a communication from you. At this meeting, the matter of a position with the Pacific Live Stock Association was taken up and discussed very thoroughly, Mr. Ward outlining to me the duties of the position he wished to offer me, and I in turn placed before him my qualifications for that position. I am not an insurance man, but this fact is more than compensated for by the fact that I have many years experience in different lines in general business, as well as office management. I have natural executive ability, combined with a capacity for organization and the faculty for making friends, all valuable assets when considered in connection with a position such as I understand will be open. Regarding the Pacific Coast Live Stock Association, I can only offer my judgment as I have seen the business locally, and I am most favorably impressed. I see no reason why, with capable management, considering the fact that they have no competition, they should not do an immense and constantly-increasing business, touching as they do, a field hitherto undisturbed, and protecting their policy-holders against a loss which has heretofore been absolute. Now, of course, new business is the keynote, and much depends upon the men connected as agents, and in this connection I might say that I think the office can do much to help in keeping them up to their work. Prompt attention to routine business in the office will encourage, while dilatory methods will discourage. I think a personal meeting very desirable, and while I cannot take the

time to meet you in Olympia, I will take the time to meet you in Portland, preferably on Sunday, but on any day best suiting you, if you will give me twenty-four hours' notice. I would like very much to meet you before the annual meeting of the association, and trust you will be able to arrange it. Yours respectfully, W. H. Hobson.

By MR. ISRAEL: Article 25, Defendant's Exhibit A—

Yuma, Arizona, Apr. 14, '06. Mr. John H. Schively, Olympia, Wash.: Friend Schively—I am in receipt of yours of the 28th ult., with Mr. Hobson's letter enclosed. I think he is certainly the man for the place. The annual meeting was held on the second inst., regardless of their written agreement to postpone. They seem to have had a quiet affair; all old officers re-elected. Our books have not been audited since last July, and should be at once. Don't you think it a good idea to suggest this to the association, and also suggest Mr. Hobson as being a good man to do the auditing? In this way he will have an opportunity to meet all the board, and we can work him in as general manager without any feelings on the part of Mr. Schrock. If you have not already had an appointment with Mr. Hobson, can you not arrange to have him meet you and me in Portland on Monday, May 30th? We start home in time to be in Portland on that date. If you can make the arrangement with Mr. Hobson, write me at Frisco not later than the 26th, care Palace hotel. My health has improved, but I am not equal to the strenuous life which I have led the past year. I need be careful for several months yet. Mrs. Ward joins me in sending kindest regards to you. Very truly yours, E. R. Ward. P. S.—Should you fail to get me in a communication to 'Frisco, you can address me at 308 So. 10th street, Portland, E. R. W.

Q. What, if anything, did you do towards the suggestions of Mr. Ward to work Hobson in under the guise of an auditor, so that he could undermine Schrock?

A. I took, so far as I know, no further step in that matter. I never met Mr. Hobson, to my knowledge.

Q. Never carried out this Portland proposition?

By MR. MANAGER EDGE: What Portland proposition?

By MR. ISRAEL: Referred to in the Ward letter—that he arrange a meeting for himself and Schively and Hobson at Portland.

A. To the best of my knowledge, I never saw Mr. Hobson. I met Mr. Ward once in the last five years in Portland, but when that was, I don't know.

By MR. ISRAEL: Q. Now, in the meantime, this letter is dated on April 14, 1906. Starting from that date, tell the Senate what your connections, if any, were with the Pacific Live Stock Company, together with any and all agreements made with them up until the first of July, 1906, from the date of this letter on up to the first of July—what occurred?

A. Some time after the receipt of this letter, which you say was in April, I was in the city of Spokane. Mr. Schrock had also spoken to me about another manager. The business of the association was growing so rapidly and being handled so poorly that it was not only clear to Mr. Ward, but likewise to Mr. Schrock, that a manager with experience and executive ability was necessary. In the month of June—somewhere about the middle of the month—I was in Spokane attending some session of a grand lodge of a fraternal organization—the Masonic grand lodge, I think. During my stay there Mr. Schrock was urging very strenuously that by some means a manager should be found. I am of the opinion that Mr. Ward was present and likewise urged the same

thing, but each at variance with each other. One day Mr. Schrock met me and Mr. Copeland—I think someone else was present—and said to me that something must be done. The tension had reached such a point that a break of some kind was eminent. Now, I said, "Mr. Schrock, let us go and talk with your attorney," and we went over to see Mr. Murray at the head office of the Great Northern railroad, and there the conversation was held detailed by the counsel this morning.

Q. I want you to tell it now. Understand, Mr. Schively, I was simply telling the senators what I expected to prove and that doesn't avoid the necessity of telling the story as it was.

A. We were talking the matter over. I was telling him their difficulties and why they had difficulties—not only their internal difficulties, their quarreling with one another—but that they were taking their income absolutely in premium notes. They were having very little cash, and the claims were demanded in cash. The liabilities—those who lost their stock—were demanding payment in cash. The income of the company was largely in notes, and I was showing them the necessity of having available cash with which to pay these matters, and then increasing the liabilities; and what the men needed was a man not only efficient in the office but likewise strong in his handling of the agent force, and to obtain the business upon a larger cash payment of the original premium. While I was amplifying on this, Mr. Murray said, "Mr. Schively appears to know what is needed; why not offer him a sufficient inducement to accept this position?" That was some time in the middle of June, and the first time that the thought ever entered my mind of becoming personally associated with the Pacific Live Stock Association. Mr. Schrock replied, turning to me, "That is just the thing; if you will take this position, we will give you anything you ask." And I said to Mr. Schrock, "How much are you receiving? What do the trustees receive?" He said "We are receiving \$600 a month"; and I said to him, "Then, if you are receiving \$600 a month, I ought to be worth to you at least \$400 a month, if I could discharge the duties which I have here outlined." Mr. Schrock said, "We will simply give you \$400 a month if you will accept this position." "Now," I said, "this come too suddenly for me to give a decisive answer, but I will wait awhile and consult my wife and Mr. Nichols and my friends in Olympia"; and from that time there was no further talk, so far as I know, on the part of either Mr. Ward or any one else. They both seemed satisfied with this proposition, and both worked toward a consummation of this suggestion.

Q. Did you finally come to the agreement that you would go home and then go back and take the job as manager?

A. I came to the agreement that I would go home with this idea in view, and with the thought of accepting this position. Now, when I went the next time, with the express purpose—I don't remember the exact date; these checks will show, because the financial part of it began at this time; I think the financial part of it began when I was over in the middle of June; my memory is that at that time the check charged against me on the first of July was paid.

Q. What was it for—that check?

A. It was for services given to these people, so far as I remember, in these various consultations.

Q. By the warring factions?

A. While these factions were warring with each other.

At 5 o'clock p. m., adjournment was taken until 9:30 a. m., Saturday, August 21.

SENATE CHAMBER,  
OLYMPIA, WASH., August, 21, 1909.

The Senate, sitting as a court of impeachment, convened at 9:30 a. m., and then adjourned to 1:30 p. m.

AFTERNOON SESSION.

The Senate, sitting as a court of impeachment, convened at 1:30 p. m.

BY THE PRESIDENT: Senator Knickerbocker will please take the chair.

BY THE PRESIDING OFFICER: Mr. Israel, are you ready to proceed?

BY MR. ISRAEL: Yes, your honor. Now, if your honor please, I would ask the consent of your honor and the board of managers at this time to temporarily withdraw Mr. Schively from the witness stand for the purpose of putting on a very short witness in the person of Mr. Lindsley, the cashier of the bank in Spokane. Mr. Lindsley informs me that he has come in obedience to this subpoena *duces tecum*, leaving inadequate help in the bank, and it is working a hardship on the bank for him to be away, and desires to return to Spokane tonight, and under the circumstances I ask that the managers will permit me to withdraw Mr. Schively and let this witness' testimony be taken.

BY MR. LEE: No objection.

A. W. Lindsley, being a witness called on behalf of the respondent, after having been duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. A. W. Lindsley.

Q. Where do you reside?

A. Spokane, Washington.

Q. What is your business?

A. Cashier of the Fidelity National bank.

Q. How long have you been cashier of the Fidelity National bank?

A. Six or seven years.

Q. Were you such cashier in the months of July, August, September, and October of 1906?

A. I was.

Q. Who, if any one, at that time had charge of the collection register; under whose supervision was it?

A. Well, I couldn't say.

Q. Was there a collection register kept?

A. Yes.

Q. Do you remember, or can you remember, or is there any manner in which you can tell whether or not you made a loan—whether your bank made a loan to Mr. Ward, who had been formerly president of the Pacific Live Stock Association, about the 10th of July, 1906?

A. Yes, sir.

Q. Will you kindly state on what date the loan was made, and the amount of it?

A. I have a leaf of the bills receivable register at that time.

Q. Took it out of the book?

A. Took it out of the book, yes.

Q. Taken out of the book by whom?

A. Taken out of the book by myself.

Q. What does it show in regard to a loan?

A. It shows that a loan was made to Mr. E. R. Ward on July 6th, \$800, and received three notes of \$400 each as collateral to secure the \$800 loan.

Q. Does it show whose notes they were?

A. The register does not.

Q. Have you any data or memoranda of your own by which you could establish who was the maker of any one or more of those notes?

A. The only thing I have is the record of the last one paid. It was paid and placed to the credit of Mr. Ward.

Q. When was it paid and placed to the credit of Mr. Ward?

A. October 3, 1906.

Q. What was the memoranda on that date—what is the memoranda?

A. It is the deposit slip made out by me at that time, stating that the deposit with the Fidelity National bank of E. R. Ward, being collection of a collateral note of the Pacific Live Stock Association, was \$400.

Q. And that date was what?

A. October 3d.

Q. Who made the collection, Mr. Lindsley?

A. I did.

Q. I show you a check dated October 3d, 1906, by John H. Schively, president, and J. B. Schrock, general manager, payable to the Fidelity National bank, for \$400, and ask you if that is the check with which this note of the Pacific Live Stock collateral was paid?

A. Well, I presume it was; same amount and bears our clearing house stamp, and I presume it is the same one.

Q. And the notation—have you any objection to giving up this deposit slip?

A. None whatever, if it is returned to me.

By MR. ISRAEL: I would like to offer this in evidence, with permission of withdrawing it after the trial and returning it.

By MR. MANAGER EDGE: No objection.

[*Marked "Article 25, Respondent's Exhibit C."*]

By MR. ISRAEL: Exhibit C, reads as follows:

Deposited with the Fidelity National Bank, by E. R. Ward, of collateral note, Pacific Live Stock Association, 10-3, 1906—\$400.

By MR. ISRAEL: Q. Have you any data, Mr. Lindsley, by which you can state how the other two notes that were deposited as collateral with this third note were executed, or whether or not they were also executed by the Pacific Live Stock Association?

A. I haven't anything that would give any light on that subject.

Q. But it applies to the third note, collected on the third of October?

A. Yes, sir.

Q. That was a Pacific Live Stock Association note?

A. Yes, sir.



*Cross-Examination—*

BY MR. MANAGER EDGE: Q. Did you ever see this note Mr. Lindsey?

A. Yes.

Q. Can you recall from any other source than that deposit slip who the signers of the notes were, or can you state from your own knowledge and recollection who the signers of the notes were?

A. No, I cannot.

Q. Did you know whether or not J. H. Schively's name was on the note as a signer?

A. No.

Q. Do you recall that the Pacific Live Stock Association's name was on the note?

A. Not from memory. I simply rely on my records.

Q. Who made or filled out the deposit slip which was shown to you?

A. I did.

Q. You had known Mr. Ward for some time?

A. Yes.

Q. You knew that he had been president of the Pacific Live Stock Company?

A. Yes.

Q. Had they done some business with your bank?

A. Yes.

Q. And had he done it as an official of the Pacific Live Stock Company?

A. Well, he also had a personal account.

Q. Did you know Mr. Schively at that time?

A. No, sir.

Q. When the application was made for the loan were you the official of the bank with whom the negotiation was carried on?

A. No, sir.

Q. With whom was that negotiation carried on?

A. With the president.

Q. Did you make any examination of the collateral at that time?

A. I did not.

Q. Did you at any subsequent time?

A. No, none whatever, except I surrendered the notes as they were paid.

Q. When the notes were paid, to what official or clerk in the bank would they have been paid?

A. I received payment on two of them and the president received payment on one.

Q. Which two did you receive payment on?

A. One on September 5th and the other on October 3rd.

Q. Have you made any investigation among the other officers or employees of the bank since this matter has arisen in order to ascertain from some one who did see the notes who the signers were, or talked with any one about that?

A. Simply searched the records. The president was away and I could not get in touch with him at all.

Q. You wouldn't say as a positive fact that Mr. Schively's name was or was not on the notes?

A. I couldn't say as to that.

Q. You say that loan was made on July 6?

A. July 6th, credited to our record.

Q. Was the collateral put up at that time?

A. Yes.

Q. Then the notes that you saw must have been dated or executed some time prior to that?

A. Well, I don't know about that. It is presumed when the loan is made the collateral is put up at once. But it may have been executed before or it may have been executed that day.

Q. Did you notice the date on the notes?

A. No, sir.

Q. Did you notice whether or not they were drawn up with pen or with a machine—typewriter?

A. I have no recollection.

Q. Did you notice whether or not the name of the Pacific Live Stock Association, if it was on there, was written on with pen or put on with a stamp?

A. I have no recollection of that.

Q. Do you know whether or not J. B. Schrock's name was on there?

A. I have no recollection of that.

Q. When you make a record of notes that are executed by different, several different persons, do you always make a record of their name, that is signed to the note or do you simply take some name that appears among them and use that for the purpose of describing it?

A. We usually take the name that we look to for payment. It is usually the first signer, the person whom we look to for payment.

Q. Do you have any other record in your bank where the collateral of your loans is described?

A. We have a collateral cover that we usually list the collateral notes on, and when the notes are paid we mark the collateral paid with a stamp, and file it away; but in this instance I was unable to find it. Sometimes the collateral is attached to the note, and in that case the card isn't filled out; it is simply pinned to the original note.

Q. Where is the record of that note, Mr. Lindsley?

[Witness refers counsel to exhibit.]

Q. You knew at the time that Ward made the application that he had been, and for all you knew at that time was then, the president of the Pacific Live Stock Association?

A. At the time our note was executed?

Q. At the time he made the loan from your bank, yes.

A. Why, it was my understanding that he had sold out at that time, from the recollection I have now.

Q. Did you learn that from your conversation with him?

A. At that time, yes.

Q. Did he state to whom he had sold out?

BY MR. ISRAEL: Now, if your honor please, I object to that, for the reason that it is not cross-examination and for the reason that it is hearsay. What the conversation between Ward and Mr. Lindsley was is hearsay.

BY MR. MANAGER EDGE: It goes to show what occurred at that time, and is testing his memory as to what actually did occur.

BY MR. ISRAEL: It is purely hearsay, your honor.

BY THE PRESIDING OFFICER: I think the quickest way to dispose of this is to overrule the objection.

[Question repeated by the stenographer.]

A. Well, I would like to qualify that a little. I can't say the exact date. The conversation might have taken place a few days before or a few days after that note, because I didn't make the loan.

Q. But do you recollect—you recollect of having a conversation with Mr. Ward, and he told you that he had sold out about that time?

A. I recollect of having a conversation with Mr. Ward and he told me that he had sold out about that time.

Q. Do you recall to whom he stated he had sold?

A. I do not recall.

Q. You say you did not examine the collateral at the time the note was made?

A. I did not.

Q. Who did examine them?

A. Mr. Brooks, the president.

Q. And were those notes paid through you or through the collection department of your bank?

A. Paid through me—that is, two of them—and one through the president.

Q. Was there anything said at that time as to whether or not the company had put Ward out?

A. I do not recall anything.

BY MR. ISRAEL: I want to introduce these leaves also for the purpose of explanation of this testimony, and I will offer these for what they are worth.

BY MR. MANAGER EDGE: No objection.

BY THE PRESIDING OFFICER: They may be admitted.

[*Marked "Article 25, Respondent's Exhibit D."*]

BY MR. ISRAEL: Now, if the court please, Mr. Lindsley says that they are part of their bank record of "Bills Payable," and may be called for at any moment, and they have no particular bearing, and I think we had better let him take them.

BY THE PRESIDING OFFICER: If there is no objection, the two four pages, two leaves, just offered in evidence may be withdrawn, and delivered to Mr. Lindsley.

*Re-Direct Examination—*

BY MR. ISRAEL: Q. Are you not in error in saying that the date of the note, of the Ward note, was July 16th? Is that not June 14th?

A. No, sir, it is July 16th.

Q. It is July 16th?

A. Yes, sir.

Q. Then, the notes were put up as collateral security on the 16th of July, instead of the 6th?

A. Yes.

Q. That is when you had the talk with Ward, the 16th of July?

A. Yes.

BY MR. ISRAEL: That clears up the mystery.

BY THE PRESIDING OFFICER: If counsel or any of the senators desire any line or lines of these sheets read here, in so far as they relate to this transaction, they will be read to the Senate.

BY MR. ISRAEL: They might as well be read by somebody before the exhibit is taken away. The subdivision of columns on top of the page

are as follows: First, "Date," "Number," "Drawer," "In whose favor," "Where payable," "Time," "When due," "Amount," "When and how disposed of." The first column, "Date," appears opposite this item of Ward, ditto marks, which are ditto marks of July 16th, ditto of 16 and ditto of July. In the number column appears the number "14682." In the drawer column appear the words "E. R. Ward." "In whose favor" column is blank. "Where payable" is blank, and the "Time" column contains the figure "3." "When due," or the column of "Time," in the column "September," is "one-6." That is all. In the "Amount" column, "eight hundred dollars." In the "How disposed of" column are in figures "\$400," and then underneath that "\$400" and the figure "9" with a slanting dash, "9-5-06, 8-2-06" and the words "On account"; opposite these words, "Coll."

BY MR. MANAGER EDGE: These dates, October 16th, and the eight hundred dollars and four hundred dollars is with reference to the notes that he gave to the bank as collateral.

BY MR. ISRAEL: That would indicate two collateral collections, "9-5" and August 2d, had discharged the eight hundred dollars—

BY MR. MANAGER EDGE: The line "eight hundred dollars" made up of two notes due. Perhaps we had better recall the witness.

[Witness Lindsley recalled for further examination.]

BY MR. ISRAEL: What are these two hundred dollars in the "Disposed of" column?

A. These are two payments.

Q. One was made on August 2d and the other September 5th—which discharged the one note of Mr. Ward's of eight hundred dollars?

A. Yes, sir.

BY MR. MANAGER EDGE: Did that discharge Mr. Ward's indebtedness to the bank, and the last check for that, then, was given on September 5th, which discharged his indebtedness to the bank, after September 5th, your bank would have nothing more to do with it.

BY MR. ISRAEL: His bank collected the third note on the 5th and passed it—as I understand him—the collection of the first two notes discharged the Ward note, and released the balance of the collateral note. The note did not fall due for another month.

A. Simply remained in our hands.

Q. And on October 3d collected the balance of the collateral and the other two collections, having discharged the note, you passed that collection to Mr. Ward's account, with this cashier's memorandum of deposit?

A. Yes, sir.

BY SENATOR STEWART: May I ask a question?

BY THE PRESIDING OFFICER: The rules provide that the question may be written and handed to the presiding officer.

BY THE PRESIDING OFFICER: [Addressing witness.] A senator desires to propound this question to you, which you will answer: Was this loan entered up by an ordinary note bookkeeper, without any special order from you or from the president?

A. Just entered up in the usual way.

BY THE PRESIDING OFFICER: Any further questions?

BY MR. ISRAEL: I think Senator Fishback is preparing a question.

BY THE PRESIDING OFFICER: Mr. Lindsley, another question has been sent up by a senator, which you will answer. The question is this: If the note had more than one signer, at the time of collection, whose name would be noted on memorandum, the name of the party to whom you looked to as responsible party or to any other parties whose names may have appeared on notes?

A. I think I answered that; I will answer it again. Usually the party to whom we look to for payment is the one that we note on the deposit slip.

BY MR. ISRAEL: You usually look to the name for payment that is the first signer of the note?

A. Usually the first name, that is the one we usually look to for payment.

Q. That is the maker?

A. Yes.

BY SENATOR BASSETT: I have two questions I would like to have answered.

BY THE PRESIDING OFFICER: Mr. Lindsley, another question has been asked by a senator, which you will answer. It is as follows: Was there any entry on the records of the bank of the makers' notes collateral to note of Mr. Ward?

A. Please read that question again.

BY MR. ISRAEL: Was there any entry on the records of the bank of the makers' notes collateral to the note of Mr. Ward?

A. I could not find any record.

BY THE PRESIDING OFFICER: Another question by Senator Bassett: Did the entry of "P. L. S. Ass'n, four hundred," on your books indicate a payment of note of that company or a deposit by that company?

BY SENATOR BASSETT: Referring to the entry on the credit slip.

BY MR. ISRAEL: The senator desires to ask whether that notation on the credit slip indicated a payment by the company—of a payment of that company's note?

A. Senator Bassett is a banker and ought to know just how that goes. The first name of the deposit slip is put down first, because the bookkeeper posts from the deposit slip, and he invariably takes the first name, and the other is simply an explanation of what the deposit was and who made it.

BY SENATOR BASSETT: Would it be in order for me to make an explanation? I do not seem to be understood by court or the witness.

BY THE PRESIDING OFFICER: I think you may be permitted.

BY SENATOR BASSETT: In asking this question, the point I would like to bring out is this: Counsel has brought to us an exhibit, a deposit slip of the Fidelity National Bank, for October 5th, 1906. On that deposit slip are the words, I understand "For Pacific Live Stock Association, four hundred dollars, credit to Ward." The point I wish to bring out is whether that entry on that deposit slip meant that the Pacific Live Stock Association had sent down a check for the credit of Mr. Ward, or whether a note of the Pacific Live Stock Association had been paid and credited to Mr. Ward?

A. The deposit slip shows on the face of it that it was a collection made on the collateral note held by us—the four hundred, “Coll’n,” an abbreviation for collection.

BY MR. MANAGER EDGE: I think we can expedite matters and get what the senators desire—I think what the senators desire to know is this: When that notation, “Pacific Live Stock Association,” was put on that deposit slip, was it placed on there by reason of the fact that you had received one, or two or three checks from the Pacific Live Stock Association to take up those notes; wasn’t it clear to your mind, and did you not put that on there by reason of having received those checks from these notes?

A. If the company had made a deposit, I would not put on there “Deposited by Pacific Livestock Association,” but I would put on there “Collateral Pacific Live Stock Association note”; that would indicate it was a note, indicate to me that we had the collateral, and what disposition we had made of it.

Q. In fact, you had collected the note of the Pacific Live Stock Association?

A. Yes; Mr. Ward wanted to know what the collection was, and I turned to the deposit slip, and showed him where he had received credit for it.

BY SENATOR COTTERILL: The witness has, as I understand it, interpreted the abbreviation “Coll.” once as being collection and once as being collateral. I have not seen the exhibit. Is it “Coll’n”?

A. No, sir; it is “Coll.”

BY SENATOR COTTERILL: How does he explain that it is either “collateral” or “collection”?

A. It is “collateral” in my mind because we never had the notes for collection.

BY MR. ISRAEL: Can you recall a note made by the Pacific Live Stock Association which was paid—

BY MR. MANAGER EDGE: Let us proceed in order here. I think we should ask this witness and let him testify as to what the facts are.

BY MR. ISRAEL: I would suggest the other plan. We should not try to throttle the questions of any of the senators.

BY MR. MANAGER EDGE: You know better than to say we are trying to throttle the questions of the senators—

BY MR. ISRAEL: I am not saying that you are trying to throttle the senators. I am saying that we should not throttle them.

BY MR. MANAGER EDGE: If a note had upon it a couple of individual names first as signers, and afterwards the name of a well-known company, such as the Pacific Live Stock Association, would you in that event have made your notation as based on the first individual name or names, or would you have taken the name of the company with which you were well acquainted in describing the ones who executed the note?

A. Well, I hardly know. Of course I would take the one—if I had some unfamiliar names on there, I would certainly not have taken those.

BY MR. MANAGER EDGE: Would you have described the note by the name of a person or company with whom you were acquainted and knew—the company that had a financial standing with your bank?

A. Well, I hardly know how to answer that. It seems to me I would take the one we would look to for payment—that is, the one I

would most easily identify, and that is the one we would look to for payment.

BY MR. MANAGER EDGE: Regardless of its place on the foot of the note?

A. Yes, sir.

BY MR. ISRAEL: In banking, the ordinary rule, where there is a maker and an accomodation maker, the invariable custom is for the maker to sign first, and then the accomodation maker to sign?

A. Yes, sir.

Q. And the first signature is the signature of the real maker?

A. They are both makers, but usually the one that is expected to pay the note is the first signer.

Q. And that is the name that is generally carried on the books of the bank as descriptive of the maker?

A. Yes.

BY THE PRESIDING OFFICER: If any of the senators desire to see these two pages which will be taken away, they will be given an opportunity of about a minute; otherwise we will proceed. Mr. Israel, you may proceed.

BY MR. ISRAEL: We will call Mr. LeMaster. This is with the consent of the managers, Mr. President.

Ellis LeMaster, a witness produced on behalf of the respondent herein, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. Ellis LeMaster.

Q. Where do you reside?

A. Spokane, Washington.

Q. What is your business?

A. Public accountant.

Q. How long have you resided in Spokane?

A. About five years.

Q. Do you know one E. W. Evenson?

A. Yes, sir.

Q. Did you know him on or about July 31st, 1907?

A. I did.

Q. Did you know at that time of an insurance company at Spokane known as the Washington Hardware & Implement Dealers' Mutual Fire Insurance Association of Spokane, Washington?

A. I did.

Q. Did you about the 31st day of July, 1907, at the request of Mr. Evenson, or any member of his company, prepare any accounting work for that company?

A. I think either during the latter part of the month of June or during the month of July of that year.

Q. For what purpose was the work done?

A. For the verification of the secretary's record, and for the purpose of suggesting improvements in his accounting system.

Q. Of how voluminous a nature was the report you made for them?

A. I have forgotten the number of pages.

Q. I show you what purports to be a copy of the records as to the

same matters made by the insurance department of the State of Washington on August 5th, 1907, and call your attention to the recapitulations—or figures therein which appear to be the recapitulations—and ask you if you recognize that as recapitulations, and as part of the work in that accounting?

A. [*Witness examines.*] I cannot positively identify these figures as a summary of the report that I made, or rather of the figures that were contained in my report, but from my recollection of the matter these figures are familiar.

Q. What I wanted to get at, Mr. LeMaster, was this: Refreshing yourself from this recapitulation, can you state now about how exhaustive and extensive the auditing and reporting was that you made at that time?

A. If I remember correctly, that was the first or the second report that I had made.

Q. That is, how voluminous was it? I want to get some idea of the volume of it.

A. Well, I am unable to determine from memory whether this pertains to the first report or to the second report that I made of the company. If it were the first report, I think I was engaged upon the matter all told something like eight days. Upon the second report I was engaged with a helper, I think, four and a half days.

Q. Now, in making the report, did you deal in details?

A. I did not, exhaustively.

Q. Exhaustively, so that the report that you furnished for the purpose of its verification or checking and verification of its details, to prove the recapitulation, would be the work of some considerable time and moment?

A. Yes, sir.

Q. It would take considerable time to do it, to verify it?

A. Yes, sir.

BY MR. LEE: Your honor, I don't know that any cross-examination is necessary until we can see the materiality of this testimony. I would like to have counsel explain what this testimony is for.

BY MR. ISRAEL: Exactly; I will freely explain. I put Mr. LeMaster on the stand out of order because he has successively laid down on me the fact that he had to get home, and I do not doubt it, and I said to the board of managers and their counsel that I would put him on out of order, out of consideration for Mr. LeMaster; but Mr. LeMaster was called here as a witness by myself, to have followed Mr. Schively's statement in contradiction of Evenson as to the amount of work he really did in the Evenson examination. Then Mr. LeMaster would have followed for the purpose of verifying or corroborating—in an orderly way corroborating Mr. Schively as to the extent of that work. But you see I put him in ahead of Mr. Schively's story, and that is the reason it didn't appear a material matter.

BY THE PRESIDING OFFICER: This is introduced as having a bearing upon Article 17.

BY MR. ISRAEL: Yes, sir, upon the extent of that examination which it is charged has been perfunctory; and it should become orderly after Mr. Schively's testimony as to what he really did.



*Cross-Examination—*

BY MR. LEE: Q. Mr. LeMaster, did Mr. Schively assist you in either one of these two examinations?

A. He did not.

Q. Did he pay you for it?

A. No, sir.

Q. So far as you know, then, this was a complete report of your own, made from the books, records and files of this company represented by Mr. Evenson, without any assistance whatever from Mr. Schively?

A. To what report do you refer, Mr. Lee?

Q. Either one of the reports that you made of that company?

A. My report was made solely upon my own responsibilities.

Q. Mr. Schively had nothing to do with it?

A. Absolutely nothing.

Q. You were paid by Mr. Evenson and employed by him?

A. I was.

Q. Do you know whether or not Mr. Schively got \$100.00 for receiving this report, which he handed to Mr. Evenson?

A. I do not, other than perhaps I may have seen the voucher afterwards upon the books.

Q. Was Mr. Schively your confidential agent at any time, or were you identified with him in a capacity at any time?

A. I was never identified with Mr. Schively as a confidential agent. Mr. Schively has seen fit on a number of occasions to favor me in examinations of companies in Eastern Washington.

Q. That is the extent of your relations?

A. That is the extent of our relations, Mr. Lee, entirely. So far as Mr. Schively was concerned, he was good enough to favor myself and our firm.

Q. So that, so far as this Evenson transaction goes, you were employed by Mr. Evenson to examine the books, you did examine the books and you were paid by Mr. Evenson and you rendered your report to him?

A. In every case in which I have examined a company in Eastern Washington, I was employed by the company, and the company paid me my compensation.

Q. That is all?

A. There might possibly be one—I don't know whether it is material at this time to bring it in—in connection with one company, I believe I was approached by the insurance department and asked if I would undertake the work. I told them that I would if they would require a deposit in advance. That, I believe, was subsequently done for me by the insurance department, and a part of that was eventually returned to the company.

Q. Pardon me, are you through?

A. Yes, sir.

Q. Do you know, Mr. LeMaster, in this connection or in other connection, whether Mr. Schively was accustomed to take your report, for which you had been officially paid, after receiving that report for this or other companies, and demand money for them?

A. I have no knowledge of that.

Q. That is all.

A. But if I may—

*Re-Direct Examination—*

BY MR. ISRAEL: Q. Just one moment, Mr. LeMaster. Let's refer back to the beaten path we left some time ago as to what you were introduced here to testify to. I understood you, in your direct examination, and also more in detail in your cross-examination, to say that you made these reports of your own volition, by your own work independent of everybody, and you stood upon them, upon the truthfulness of them, as you had demonstrated when you found your totals; in other words, they were your reports, and nobody else's?

A. Exactly.

Q. Now then, it is also true that in the Evenson case you made a very varied and voluminous report; that is true?

A. That is true.

Q. Now, you don't mean to say, nor you don't mean to be understood by the attorney's question that the report itself demonstrated its truthfulness without examination, but that it would be found true if it were examined?

A. Certainly.

Q. Certainly, that is the situation. Now, since the attorney general recurred to it—to this confidential agent phase—you know, and it is a fact, that Mr. Schively and the insurance department has not had you perform work for them, but you know it as a fact and it has come to your ears that they have stated without any qualification that they regarded your work to be accurate and yourself to be above reproach in such work, and that they had the utmost confidence in you as an accountant—you heard those things?

A. I am very grateful to the insurance department for a letter I have in my possession which—

Q. Carried out that very idea?

A. Carried out that very idea.

Q. Yes, sir; that is all.

BY MR. ISRAEL: That is all, Mr. LeMaster. You may return to Spokane, so far as I am concerned, if these gentlemen excuse you.

BY MR. LEE: Yes.

BY MR. ISRAEL: Now, if the court please, I am not going to put myself in the light of being captious at all; but it is getting along close to 3 o'clock now, and I am perturbed and frightened by a remark made by the president—Senator Ruth, I believe—that we have had more or less turmoil here ever since the impeachment took up by the swinging of this door and the announcement of messengers from the House, which attracts even counsel's attention; and the announcement of Senator Ruth that the Senate had passed a resolution that I was glad to hear, that they would indulge in no legislative matters; that this court would have to sit from day to day for the necessary time, and not permit these reports to be heard from the House. It strikes me that it is hardly placing anybody in a proper attitude and it is hardly fair to either state or counsel that the senators' minds shall be disturbed every few moments from what is going on on the witness stand to something that is coming from the House, and going back to the witness again, constantly breaking in. It breaks in on me, I know. Just at the moment I was going on to ask something chronologically, I am stopped. I don't see how you are going to prevent yourselves from

being more or less disturbed by this ambitious House across the way for the rest of the afternoon, and I think the board of managers, the senators, ought to join with me in the proposition that we ought not to have to proceed for the next two hours in this piecemeal way.

BY MR. LEE: What does the counsel suggest now?

BY MR. ISRAEL: I suggest that we adjourn this court of impeachment until Monday morning at 9 o'clock.

BY MR. LEE: And at that time will you be willing to continue the evidence uninterruptedly and until the close of the case?

BY MR. ISRAEL: Yes, indeed I will, and to go to work at 9 instead of 9:30, if it suits the court.

BY THE PRESIDING OFFICER: The chair feels that the request of Mr. Israel, which does not seem to be opposed by the board of managers, is a reasonable request. The chair does not believe that it is possible for counsel or senators to pursue an unbroken line of thought when interrupted in these proceedings. The chair does not believe, however, that it is within the arbitrary power of the chair to order a recess until 9:30 Monday morning. I make this suggestion; it is up to the court to do as it sees fit.

BY SENATOR FISHBACK: I move that we adjourn our court of impeachment until 9:30 Monday morning.

BY SENATOR POTTS: Second the motion.

BY SENATOR WILLIAMS: Why wouldn't it be well to make that hour 1:30, in order to allow the gentlemen to get here by 1:30?

BY SENATOR FATLAND: 1:30 seems to me to be the proper hour.

BY SENATOR FALCONER: Mr. President, this means a delay of one day. We will walk the streets this afternoon until 6:30, and I don't see why we should adjourn at this time, or why we should take a recess until 1:30 Monday. I think we ought to continue this court the rest of the afternoon, and I think the chair will hold it will take a two-thirds vote to change the ruling we have made.

BY SENATOR BRYAN: I believe that the claim of the counsel is warranted by the circumstances. I don't believe there would be any attorney that would have to put on this evidence but who would consider it to be fair; and if he puts on a witness now—for instance, he puts Mr. Schively on the stand—when Mr. Israel takes up the testimony Monday morning, he will have to take up the same testimony, and there will not be any two hours saved. I believe we ought to grant this motion, and I don't care if it goes to 1:30; we can have a night session and equal it up. I think that really we cannot try this case in an orderly and progressive manner in the next two hours.

BY SENATOR PIPER: Mr. President, is there any motion before the house as a substitute to make this 1:30?

BY THE PRESIDING OFFICER: There is a motion by Senator Fishback that this court of impeachment adjourn until 9:30 Monday morning. That is seconded. A motion was made to amend, but not seconded.

BY SENATOR WILLIAMS: I renew my motion that we adjourn until 1:30 Monday, and I believe I have a second.

BY SENATOR FATLAND: Second the motion.

BY SENATOR PIPER: Mr. President, they have not made the motion in order. I am opposed to the motion, if they should make a substitute. I think if we adjourn at this time it means the loss of almost half a day, and we adjourn until Monday afternoon, it makes another delay and delays this game too much. Now, I believed that this trial should be resumed Monday morning at 9:30. I am heartily in favor of the motion to adjourn at this time until 9:30 Monday morning.

BY SENATOR FISHBACK: I just want to say a word in regard to the motion for 1:30. Now, all the members from the south here cannot get in until 2 o'clock. Now, at the beginning one senator cannot get here until 2, and another at some other time, and so forth. But we can all get here Sunday night and get to work when we like. I believe 9:30 Monday morning is right.

BY SENATOR BROWN: I am not in favor of adjourning now, but if we do adjourn, it seems to me it is better to adjourn until 9:30.

BY THE PRESIDING OFFICER: Will the Senate subside a minute?

BY SENATOR COTTERILL: Mr. President, in view of the statement by the managers, as well as the very legitimate request, it seems to me, made by the attorney for the respondent, it is not a question of adjourning this afternoon particularly. I think we would all agree to that. Now as to between the two times Monday, I think that we should do as we have been doing, and keep down to business and start in at 9:30 Monday morning. It would be a great inconvenience to some of us possibly, but this should rank first. I therefore support the original motion that the court of impeachment take a recess until 9:30 Monday morning, and hope we vote down the amendment to adjourn to 1:30 Monday afternoon.

BY SENATOR FALCONER: Mr. President, I am informed that the House will not meet again until 4:30, so there will be no more interruptions this afternoon.

BY THE PRESIDING OFFICER: The question before the Senate, if I understood the motion of the senator from Pierce, is that we adjourn at the present time until 1:30 Monday as a court of impeachment. All senators favoring the motion say "Aye"; those opposed "No." The yeas have it. The question occurs on the motion of the senator from Lewis, Senator Fishback.

BY SENATOR COTTERILL: Now, we have just had an announcement which I think is very material for all of us. We are told now that the House has adjourned until 4:30—

BY SENATOR POTTS: Mr. President, a member of the House has stated that they have not adjourned.

BY MR. MANAGER MEIGS: I can say that the House has adjourned until 4:30.

BY THE PRESIDING OFFICER: The chair has permitted a debate on a motion to adjourn or take a recess quite a while, and I have refused to hear from the gentleman from Clarke once, and if any one is to speak at this time we will hear from the senator from Clarke first.

BY SENATOR EASTHAM: Mr. President, it seems to me that the motion to adjourn is suggested by those whose convenience it suits. Those who are unable to go home are not suggesting or advocating any adjournment at all. It seems to me that those who are far from home and are remaining here over Sunday should be considered quite as much as those who are enabled to go home over Sunday and take the half day off over Saturday and the other half day or more on Monday. Now, it looks to me that we are here for a purpose. Our affairs are very much similar all over the state. My business requires me at home quite as much as anybody's, probably—at least it is more interesting to me than anybody else's business, and I see no reason, since we are here, why we should not put in the time, one as well as another. It is only fair. It is unfair for those who can get away and get back in two days or a day and a half or such a matter to insist on an adjournment when those who cannot get home have got to stay here and put in their time as best they can, and waste their time and money.

BY SENATOR FISHBACK: Mr. President, in the line of what has been said here, I desire to withdraw my motion.

BY SENATOR PAULHAMUS: Mr. President, it appears to me that the counsel representing the defendant here is certainly entitled to some rights. We all realize that the gentleman is not in the best of health. It is not possible to sit here and not know that. Now, he has asked us for a square and fair rest, and I think we ought to be fair enough to him to grant it, if he wants to lay off this afternoon, and I think he has asked for it in a reasonable way and there is no reason why the Senate should not grant it, and I think it should be granted.

BY SENATOR FALCONER: I would like to ask the counsel for respondent if it is on account of his health that he wants to adjourn?

BY MR. ISRAEL: Not primarily, Mr. Senator—secondarily, yes.

BY SENATOR FALCONER: Well, Mr. President, we have witnesses here at the expense of the state, and I believe that we should go ahead.

BY MR. ISRAEL: I am willing to go ahead on the question of health, but it is a question of this constant interruption.

BY SENATOR FALCONER: Well, the House has adjourned until 4:30. Here is two hours and fifteen minutes we can get in here this afternoon.

BY SENATOR PIPER: Notwithstanding the fact that the House has adjourned for an hour or two, is it not a fact that the chief clerk of the House can come in here when he wishes to announce himself?

BY THE PRESIDENT: I think not. There will be nothing for him to bring.

BY SENATOR COTTERILL: In order to cover this point and make it safe and just, I move our proceedings shall not be interrupted till 5 o'clock.

BY A SENATOR: Second the motion.

BY THE PRESIDENT: It has been moved and seconded that our proceedings shall not be interrupted till 5 o'clock. The chair has per-

mitted debates heretofore. The gentleman from Pierce, Senator Fatland.

BY SENATOR FATLAND: I would like to ask consent to absent myself until 9:30 Monday morning. I have business of moment and I have been here constantly; and if I am not intruding upon you in any way, I would like to have you excuse me until that time.

BY SENATOR MYERS: I move that the consent be not granted.

[*Motion seconded.*]

BY THE PRESIDENT: It has been moved and seconded the consent to Senator Fatland be not granted. [*After vote viva voce*]. The motion is carried. Well, we can fix the whole afternoon all right. We are going at it in fine shape. Counsel may as well go home. The senator from Walla Walla, Senator Cox.

BY SENATOR COX: Is there a motion before the Senate?

BY THE PRESIDENT: There is—Senator Cotterill's motion, that we proceed uninterrupted till 5 o'clock.

BY SENATOR COX: I make as a substitute for that motion a motion that this court take a recess until 9:30 Monday morning.

BY THE PRESIDENT: It has been moved and seconded as a substitute that the court of impeachment take a recess until 9:30 Monday morning. [*After vote viva voce*]. The chair is in doubt. As many as are in favor of a recess until 9:30 arise and stand until counted.

BY THE SECRETARY: Fifteen.

BY THE PRESIDENT: Those opposed.

BY THE SECRETARY: Eighteen.

BY THE PRESIDENT: The motion is lost. The question occurs on the motion of the senator from King that we proceed with the impeachment trial without interruption until 5 o'clock. As many as favor the motion, say "Aye"; contrary, "No." The ayes have it. The senator from King, Mr. Knickerbocker, will take the chair.

BY THE PRESIDING OFFICER: The chair will expect the senators who desire to remain here until 5 o'clock to keep their seats and sit quiet while the testimony is being taken. Proceed.

J. H. Schively, recalled for further direct examination, testified as follows:

BY MR. ISRAEL: With permission of the court, to carry Mr. Schively to where we were, and the Senate as well, I will read the last few questions and answers at the time we adjourned last night.

BY THE PRESIDING OFFICER: You may read.

BY MR. ISRAEL: [*Reading.*] "This was some time in the middle of June and the first time the thought ever entered my mind of becoming personally associated with the Pacific Live Stock Association. Mr. Schrock replied, turning to me, 'That is just the thing; if you will take this position, we will give you anything you ask.' And I said to Mr. Schrock, 'How much are you receiving? What do the trustees receive?' He said, 'We are receiving \$600.00 a month.' And I said to him, 'Then

if you are receiving \$600.00 a month, I ought to be at least worth to you \$400.00 a month, if I could discharge the duties which I have here outlined.' And Mr. Schrock said, 'We will, cheerfully'—I think you used the word 'gladly'—'give you \$400.00 a month if you will accept this position.' Now, I said, 'This comes too suddenly for me to give a decisive answer, but I will wait a while and consult my wife and Mr. Nichols and my friends in Olympia.' And from that time there was no further talk, so far as I know, on the part of either Mr. Ward or of Mr. Schrock or of any one else. They both seemed satisfied with this proposition and both worked toward the consummation of this suggestion."

"(Q.) Did you finally come to the agreement that you would come home and go back and take the job as manager?"

"(A.) I came to the agreement that I would go home with this idea in view, with the thought of accepting this position. Now, when I went the next time, with the expressed purpose—I don't remember the exact date—these checks will show, because the financial part of it began at that time."

Q. Now, starting there, Mr. Schively, what first do you refer to?

A. Well, first of all, Mr. Israel, I would like to correct, according to my memory, a statement of the record there, as I understood you to read just now, that there was no further talk either from Mr. Ward or Mr. Schrock.

Q. Until you returned?

A. Well, I think I added right there concerning the election of any one else than myself.

Q. Oh, up to that time there had been—you were using your good offices to get some one else?

A. Yes, sir.

Q. Now, when did the proposition next come up in regard to your managership?

A. After this conversation recited there, in which Mr. Schrock said that they would all be pleased if I would accept it, and they would gladly give me this or any other amount in reason that I desired; that there was a tentative understanding between us that it would consummate into a contract if, after my return to Olympia and I had consulted with my wife and Mr. Nichols and friends, I decided to accept it. Then I forget whether there was another visit intervening or conference between them and myself or not, but I appeared in Spokane on the 10th day of July; I may have gotten in on the 9th.

Q. No, but you evidently—you have fixed this conversation as at Mr. Murray's office in the early part of June?

A. In the middle of June.

Q. Now, there were some checks here that show that you were again in Spokane on the 23rd of June?

A. That was simply in further consultation and consideration of this; and I think at that time I went there to tell them definitely that I would take this position, accept this position, and at second interview—I think probably the checks will bear out the statement that I am about to make now—that we then further agreed, more definitely agreed, that I would accept this position of business manager for the trustees; and then when I was leaving Spokane they paid me my traveling expenses, amounting, I think, to some \$75.00, and also purchased for me to travel backwards and forwards a three-thousand-mile mileage on the Northern Pacific railroad and \$2.50 to pay for my sleeper. Then, on the 10th of July, I went over there for the express purpose of being elected the manager, and my memory is that on the morning of the 10th the agreement as to my being manager of the Pacific Live Stock Association was consummated, and that Mr. Ward and Mr. Schrock gave

me a check in the sum of \$200.00 as advance pay as the manager of this association.

Q. Right in that connection, you were charged on the book of the company—you are charged on the books of the company here—with two checks, one of \$72.25 or \$73.25, for expense of insurance commissioner, and one for \$77.50, for Northern Pacific railroad ticket. Were those the two items you spoke of a while ago?

A. Yes.

Q. What were those charged against you for?

A. The understanding we had with respect to that mileage book and the establishment of my expense was that if this arrangement or agreement as to my becoming the manager was finally consummated, and I became the manager, then this money would be charged as to myself as an employee of this Pacific Live Stock Association.

Q. But if it was not?

A. If it was not, then it was to be the payment of the association to myself for services in coming and going and looking to this arrangement, or the completion of this arrangement.

Q. And you had been, I understand, paid \$200 on June 13th for the services you had performed before that?

A. Yes, sir.

Q. Now, go on Mr. Schively, and state what occurred after you got there?

A. On the 9th or 10th?

Q. Yes, on the 9th or 10th, in detail now, and let us have the whole story?

A. I think it was on the morning of the 10th that the arrangement was finally completed by which I was to be the manager. I was to go to Denver shortly after that for some reason; I think it was the year in which the Elks held their grand lodge meeting there, and I said to these gentlemen, "I have got to go to Denver and I want, if it is agreeable to you, to have you pay me in advance, so that I shall have money with which to go to Denver."

BY MR. MANAGER EDGE: Who are they?

A. Mr. Ward and Mr. Schrock. They gave me on the morning of the 10th this check for \$200, as advance pay for the manager as an employee of the organization, and I then made a note of the \$200, as paid, and also charged myself with the mileage book and with this other expense in the amount approximately, as an employee of the organization. Now, after that was consummated on the morning of the 10th, and everybody seemed satisfied with it, and I was talking the matter over with Mr. Ward, Mr. Ward said to me, "If I could get \$1,200, I would sell out my interest in the Pacific Live Stock Association." I was thoroughly aware of the fact that there was friction between these two gentlemen, and I said to Mr. Ward, "Wait until I submit your proposition to Mr. Schrock." I had always been the go-between and I endeavored to be the peacemaker between these trustees. So I said, "I will submit your proposition to Mr. Schrock." I went to Mr. Schrock—or John, I always called him—"John, Ward says he will sell out to you." Now, I couldn't say, I couldn't swear absolutely to the words, "to you." I said, "John, Ward will sell out," or "John, Ward will sell out to you his interest for \$1,200." And Schrock said, "Just the thing; we will give him \$1,200." And I said, "Now, you are sure of that; you are willing to do that?" And he said, "Yes." I said, "I will go and tell Ward."

BY MR. ISRAEL: Q. Is that all he said at that time?

A. He said, "I will give him \$1,200."



Q. Was anything said about your being president or trustee?

A. That is coming.

Q. Well, go ahead.

A. Schrock said, "We will give him \$1,200." Now I said, "I will go and tell Ward that you will give him the \$1,200, and you will stand by it?" And he said "Yes." Mr. Schrock added, "And we will make you the president; we will elect you the trustee and make you the president in his place." "Now," I said, "John, that is all right; I am willing to be the trustee and I am willing to be the president of the association, but if that change is made, it makes no change in our financial understanding, it will make no difference as to our arrangement as to the fact of my receiving the \$400 a month." Mr. Schrock said, "It won't effect that in the least." I said, "I will bring you together; I will go and tell Ward you are willing to consummate this agreement, and I will bring you together and you do what you want to," and I explained that I must get home tonight, and I said to him, "You must complete your arrangements so that I can get home tonight. I went and found Mr. Ward, and Mr. Ward, as has been repeatedly said, was ill. Now, to the best of my memory, I advised Mr. Ward that in his conversation with Schrock, that he simply advance the idea that he was to receive the \$1,200 and not enter into any quibble or argument with Schrock as to little things, little incidents that might arise; that if that was what he wanted, the money, to get that and not have a quarrel with the trustees over any incidental matters that might arise. To the best of my knowledge, I didn't see— Well, I then took Mr. Ward to Mr. Schrock, and I said, "John, here is Ward; now you men talk this over and settle it among yourselves," and I left them together, and went out into the city to meet my friends and to prepare to leave on the evening train. At some time in the afternoon or evening before the train left for the sound—I am under the impression that I took the train that leaves Spokane somewhere about half past ten o'clock—now, some time between bringing these two gentlemen together and leaving on the train, Mr. Copeland and Mr. Shallenberger—Mr. Copeland, the trustee, and Mr. Shallenberger, the head bookkeeper—met me somewhere and said they wanted to see me in the office of the association. I went with these gentlemen to the office of the association; they told me that Mr. Ward had resigned; that I had been elected as a trustee in his place, and also as president of the association. We mutually congratulated each other on the happy—what every one believed to be the happy—solution to the problem. Ward and Schrock for the first time in a long while, as far as I remember, and every one else was on a good friendly footing. I understood that Mr. Ward had gotten his money, or he would not have offered his resignation. I understood that Mr. Schrock and the other trustees were satisfied with myself, as the other trustee and president, and whether there were any papers given to me to sign, or whether I did sign any, is an absolutely indistinct thing in my mind. It is possible, it is even probable, that the bookkeeper came to me and said that as the president—the newly-elected president—and as I was to take the train immediately, "As the newly-elected president, there are certain things you should sign here." It occurs to me now for the first time that during my absence from the 10th on up that they were signing in a stamp my name as president to the policies of the company.

Q. That was after the 10th?

A. After the 10th—after I was elected president and during my absence in Denver. Upon my return I was subsequently shown the fact that my name had been stamped on certain policies as president of the company. Whether at that time he asked for my signature to make the stamp, or whether that was a previous or subsequent act, or whether

they had taken my signature from some of the letters I had previously written, I have no idea.

Q. Had you been drinking any that afternoon, John?

A. I don't know that I had been especially. When I am over there, or at least at that time, or at any time when I meet my friends, I was of the custom to go with them in social intercourse.

Q. You had been drinking some that afternoon?

A. Yes, I imagine so. When we were through with these congratulations and good feeling and fellowship I started for the train, and as I was then to deal more with Mr. Schrock than anybody else, I think I suggested to Mr. Schrock that he go with me part of the way—at least after we were out of that meeting, and before I took the train, Mr. Schrock said to me in answer to a question of mine as to how they had arranged it, he said this, or words to this effect, "We have arranged to let Ward have the \$1,200 and to let you have your \$400 a month until the Ward matter has been settled, either by the income of his pay or millage or by some means, and at the expiration of that time when our liability in that respect"—I am not endeavoring, after three or four years, to use the exact language that went between us. I am giving you the absolute experience as it was to the best of my memory and belief—

Q. Proceed.

A. Well, Schrock said they had made arrangements by which Mr. Ward was to receive this money, and from the income of the association, but at the expiration of that time, which would be about the first of October, then I would fall heir, if I so desired, to all of the rights and privileges, financially and every other way, of Mr. Ward, and with that understanding I took the train and came to Olympia, transacted what business I had and went to Denver, and I couldn't tell just when I returned to Spokane to undertake my duties as president of the association.

Q. What developed when you got back to Spokane?

A. When I returned to Spokane I assumed the duties of president.

By MR. MANAGER EDGE: When was that?

A. I couldn't say just when that was.

Q. How long were you gone—how many weeks?

A. From Spokane?

Q. From July 10th?

A. It would be impossible for me to say.

By MR. ISRAEL: Proceed with your story; counsel has no right to interrupt you at this time.

A. Some time after returning from Denver. Well, I went to Denver; I think Mr. Nichols accompanied me to Denver. When I returned I began to arrange the affairs of the department.

Q. Now, let us turn back a moment, Mr. Schively. What did you do, if anything, upon your return to Olympia after this consummation in the electing of you as president and trustee of the Live Stock Association—what, if anything, did you do regarding your office as deputy insurance commissioner?

A. I reported to Mr. Nichols what steps had been taken over there; that I had been elected as trustee and president of the association, and I was to go there as soon as possible, and he would do me a favor by securing a successor to myself as rapidly as possible.

Q. Now then, you went back to Spokane.

A. And Mr. Nichols told me that it would not be fair to him to leave the department until he had secured the proper person; and Mr.

Nichols told me that I was making a mistake in leaving; that I could do better by staying with the department. But I told him I thought the \$400, or the salary I was getting, was better than the salary I was getting here, and I wanted to get into a business pursuit, and I thought it was a good and wise and happy opening for me. I wanted him to procure a successor, and he said, "All right, we will go to Denver and talk it all over, and until I get a successor you can come back here and attend to the business of the department until I obtain the proper person."

Q. State what you did after telling Mr. Nichols to get some one else in your place. Can you tell when you went to Spokane the next time?

A. I don't remember.

Q. Can you tell the month it was in?

A. It was either the latter part of July or early in August.

Q. Now, tell what your experience was, then, when you got back; what did you discover?

A. Almost immediately, within a few days after returning, if not the very day, we had a meeting of the trustees of the Pacific Live Stock Association and I qualified as president, and the minutes were brought up to date; and then we discussed this question as to whether the traveling expenses of the trustees in the field would be paid or not. Mr. Schrock was the manager of the association and abided in the office. Mr. Copeland was not well acquainted with the work, and he remained largely in the office.

Q. What relation, if any, were Copeland and Schrock?

A. They were brothers-in-law.

Q. That is the Mr. Copeland that was here?

A. Mr. Copeland, who testified, yes.

Q. Proceed.

A. Mr. Walker and Mr. Hunter were the practical experienced men in the field. They were practical solicitors; they were in the field a great deal of the time. Now they felt, as Mr. Copeland and Mr. Schrock were not much in the field and didn't have traveling expenses, and as they (Walker and Hunter) were in the field and did have traveling expenses, that traveling expenses should be allowed.

Q. You mean paid by the company?

A. Paid by the company; and there was considerable discussion. Now, the question was up to me to give the deciding vote. It seemed the contention, to my mind, was fair, on the part of Walker and Hunter, that if they were in the field and the others weren't, they should be paid; but likewise it seemed to my mind unfair that the association should be thus burdened when the trustees were getting so well paid as they were, and I said to them, "Gentlemen, I will hold this, my opinion, in abeyance for a day or two." I then, to the best of my knowledge, consulted Mr. Murray, the attorney of the association, on that subject. I said, "Charley—

Q. Never mind what you said; but what was the result?

A. The result was I decided in favor of the association, voting with Mr. Schrock and Mr. Copeland against Mr. Walker and Mr. Hunter. Mr. Schrock was the financial man of the company—of the association. Whenever anybody wanted money, they had to go to Mr. Schrock. Mr. Walker and Mr. Hunter wanted money, so did I, so did Mr. Copeland, and so did Mr. Schrock. When we wanted money, we went to Mr. Schrock. His check drew the money from the bank. Mr. Walker and Mr. Hunter would frequently come to me to intercede with Schrock to give them money, and it became embarrassing to me. Further than that, in the board of trustees, it more often than other—

wise fell that Mr. Walker and Mr. Hunter in the controversy would be on one side of the question and Mr. Copeland and Mr. Schrock would be on another side of the question, and I was constantly forced to give the deciding vote. In the second place, the entire financial management was in Mr. Schrock's hands. I found that, though I was the president of the association, I was no more than a letter writer in the Pacific Live Stock Association. I simply had a vote in the trustees' meetings.

Q. What do you mean? The by-laws show that the president and manager were to sign the checks, and they did sign the checks. What do you mean by Schrock's signature being required to get the money?

A. I will illustrate that. One day Mr. Walker came to me in the absence of Mr. Schrock. Mr. Schrock was out of the city. Mr. Walker came to me and said, "Where is Schrock?" I said, "I think he has gone out of the city." He said, "I wish he were here. I want to get away, and it is absolutely necessary for me to have some money." Well, I said, "Walker, I will give you a check for it," and Walker looked at me and smiled and said, "Schively, it wouldn't do me any good." I said, "Why?" And he said because there was an agreement with the bank that no money should be drawn unless Schrock's name was on the check. I said, "Walker do you mean to say that my name on these checks is simply for ornamental purposes?" Well, he said, "It provides for that in the by-laws, but in fact it is only ornamental." I said, "I doubt if my signature is ornamental anywhere," and then I further said to myself, "If I have no further authority here—

BY MR. MANAGER EDGE: Now, I object to what the witness said to himself.

BY MR. ISRAEL: Q. Put it the other way; state it as a reason.

A. Then the conclusion was forced upon my mind, if that is more technical, I am not an attorney—

Q. State the outcome of your deals with Mr. Schrock. What did all this result in?

A. The result was the conviction in my mind that if I were only a voter, one of five, and always standing between two on one side and two on the other, that it would be only a short time before the whole four were against me, and I would be let out. To the best of my memory, that conversation with Mr. Walker was held on a Saturday. I slept over the matter, and on Sunday I called Mr. Schrock over the 'phone, and found out that he had returned from the place to which he had gone, and I asked him if he would come down and have a conversation with me. When he came I said, "John, I am going to state something that may possibly hurt you, but I am going to say it with earnestness and meaning. I am not going to remain with the Pacific Live Stock Association."

Q. Now, about how long was this after you had become president?

A. I don't know how long after I had become president, but it was shortly after I had gone over and began active work.

Q. Now, at this time did you have any conversation with Sam Nichols regarding your contemplated act?

A. I had given my resignation, my written resignation I think, to Mr. Nichols, and he said to me—

Q. Never mind that; we have had that.

A. I had given my written resignation to Mr. Nichols.

Q. And you testified to that, and he told you to keep about your work until he could get some one else. Now, relative to the department, what arrangement did you make with Mr. Nichols?

A. Well, that day, after this conversation with Mr. Schrock—I

told Mr. Schrock I wouldn't stay, I am omitting the conversation until you bring me back to it—I immediately thereafter, on the following day or the day after, I think that very day, wrote to Mr. Nichols to this effect: "If you have not secured a successor for me, and are willing to allow me to withdraw my resignation, I will return to Olympia." And Mr. Nichols wrote to me to come back as soon as possible.

Q. Now, let me ask you what your conversation with Schrock was at this time?

A. I said to Mr. Schrock, that I was going to leave the Pacific Live Stock Association, and I think I outlined to him the reasons I have just given to the gentlemen of the Senate. Mr. Schrock said to me that it wouldn't do for me to leave this association—it would hurt the association. "The people would think you were withdrawing from this association because you hadn't confidence in it, and in the next place it is absolutely fair and just to us and to me that you give us time to look up a successor"; and I said, "All right, John, I want to be perfectly fair with you and fair with the association, and I want you to understand if Mr. Nichols will take me back, I want to be fair to him; and you, as speedily as possible, get some one to take my place." And he said, "I will go to work at once upon the matter." I shortly thereafter received a letter from Mr. Nichols, to which I have referred—but if I haven't referred to it, I shortly after received a letter from Mr. Nichols, that he would be glad to have me return and come as soon as possible.

Q. Now, can you fix about what month this was in, whether it was in the early part of August or September, when this occurred, having it fixed in your mind that you went there the first of July, and then to Denver and came back again; can you fix the date?

A. It seems to me it was the latter part of August or early in September. I didn't return, to the best of my present knowledge, to the work of the presidency over there till in August.

Q. Go on; you are now on the conversation with Mr. Schrock as to finding some one to take your place.

A. Well, any way, the subject of that conversation was that Mr. Schrock would, as soon as possible, secure some one to take my place. I wrote that back to Mr. Nichols and urged upon Mr. Nichols the reasons for my remaining there until he had secured a successor. Mr. Nichols said there were affairs in the department that needed my attention, and I then went backward and forward frequently between Spokane and Olympia, transacting to the best of my ability the business of the department and the work of the Live Stock Association. I constantly said to Mr. Schrock, "John, while I don't want to hurry you in this matter, I want you to be as expeditious as possible in securing some one else." Finally Mr. Schrock came to me and said there was a man by the name of Bennington, and to the best of my memory he lived at Ritzville; "I think he would be willing to take your place." Shortly thereafter, Mr. Schrock brought a gentleman to me and introduced him as Mr. Bennington, and Mr. Bennington said, "I want to have a little conversation with you, Mr. Schively." And I said, "Very well, Mr. Bennington"; and as I now remember, he and I went into the little room where the meetings were held. Mr. Bennington said, "Mr. Schively, I want to ask you clearly and honestly a question, and I want a truthful and honest answer. I am a man who can't afford to jeopardize my business reputation. Mr. Schrock desires that I become a trustee in this association. You are leaving very shortly after having entered the association. I want to ask you seriously and honestly this question: Are you leaving because you have lost confidence in the association?" I said, "Mr. Bennington, I

want to answer you very truthfully and honestly that the affairs of the Pacific Live Stock Association have been poorly managed. They have outgrown the ability of the people who have been handling them. The men handling this association, in my estimation, are honest and sincere and earnest. They have a big field here; it is the pioneer association of this character in the state; they are well known throughout the state; they have paid their claims—since I have been in this association they have paid every claim up to the agreement of the by-laws, which was a ninety-day grace limit. They have assets; the assets are not available; they are farmers' notes. The payment of a farmer's note depends upon his harvesting and upon his crop. They have been unwise in not securing a sufficient cash premium in writing the policy. If you, or any other man with business ability, can get into this Live Stock Association, and get into it with sufficient force to be a controlling factor, you can make a splendid success of this institution, and if you cannot, you won't. Now, it is up to yourself to say whether your influence here will be strong enough to be dominating, and whether or not your experience is enough to make it a success." Mr. Bennington said, "John Schively, I will take your word and agree to be elected as your successor." To the best of my knowledge, that is the only time and the only conversation I had with Mr. Bennington; and that must have been either the latter part of September or early in October, because on the 8th, I think, of October, or the 6th or the 8th, somewhere thereabouts—the checks in the books will show the exact date—Bennington appeared for the purpose of taking my balance. Mr. Ligget, the insurance commissioner of Idaho, appeared in the city of Spokane for the purpose of examining the Farmers' Mutual Live Stock Insurance Company. I met Mr. Farnsworth, of that company, and Mr. Farnsworth said to me, "Mr. Schively, are you still the deputy insurance commissioner?" And I said, "Yes." He said, "Mr. Ligget, of the Idaho department"—you will understand that the Idaho insurance commissioner is bank examiner and *ex-officio* insurance commissioner—"Mr. Ligget, the insurance commissioner of Idaho, is here for the purpose of examining our company, preparatory to its entering Idaho. We would like you to be present with him, and if you can, we want you to be present in order to protect our interest." I said, "That will be impossible, at least today, because while I am deputy insurance commissioner, I am also trustee of a rival company, and the two would not work together; but I am going to be out of there either today or tomorrow, and if you can hold it over, I wish you would, because I do not want to get one transaction mixed with the other." I went to Schrock and I said, "John, Bennington is now here, and everything is now ready, and why not let me settle with you, and go with Ligget and examine this other association?" Schrock said "All right." Then I took a memorandum out of my pocket—my pocket diary, in which I kept my account with the association. "Now," I said, "You owe me so much; here is the account. I am leaving two days before my time is out—I was elected on the 10th and this is the 8th"—I now remember distinctly it was on the 8th that this conversation occurred with Schrock, and I left the Pacific Live Stock Association. I took the diary and accounted to him for all the moneys I had received, all of the money that was due me after a little stamp account for which I had given cash to one of the employees—

Q. When?

A. I think it was on that very morning, if I mistake not. As I was about to sever my relations, I went to the office, and the mail from the evening before—there was some mail, at least, that was requisite to be sent out, and I furnished the amount in cash. I do not remember exactly what it was; that record there shows it. [Indicating.]

Q. A dollar and a half.

A. A small amount, less than two dollars and over one dollar.

Q. Go on.

A. I said, "John, you are indebted to me for thirty dollars." and at that moment, as I was settling with him he said, "I have a premium note; let me get that"; we went over to Sam Olmberg.

Q. What position did he hold in the stock association?

A. He was employed there at that time.

Q. Have you that premium note?

A. Yes, sir.

Q. Produce it.

[*Witness hands paper to counsel.*]

Q. Go on.

A. I said, "I will pay that premium note." So deducting the four hundred dollars a month for the three months as due me, minus the two days, subtracting from it the amount that had been paid, adding to this the amount of thirty dollars that Schrock owed me, and adding to it the amount for the stamps, and deducting seven dollars and a half—I think the note is—left a balance due me of \$260 and some odd cents. Now, I said, "John, there is the account that stands between us." I said, "I want that settled as soon as possible—some time today." And he said, "I will verify this and see if it is right." Now, to the best of my knowledge, that was in the morning. I would be almost willing to swear to it absolutely, for I had gone down for the purpose of closing up all of my affairs before noon. Mr. Schrock took away this statement as to the indebtedness of the association to myself, in the sum of \$260 and some odd cents, and at some portion of that day, Mr. Schrock, after consulting with the bookkeeper to see if the account was correct, gave me—I think the amount, to be exact, was just as found here [*indicating*]*—any way, Schrock gave me a check in the sum of \$260.50 in full settlement of our account—*

Q. Do you mean to be understood you saw him consult the bookkeeper, or he told you he saw the bookkeeper?

A. Absolutely. The Michigan Millers' Fire Insurance Company furnishes to every insurance department of the state a book of this nature [*indicating*] at the beginning of each year. I kept all of my private accounts in this book.

Q. That is not the question. You furnished the account at that time to him. Did you see him go to the bookkeeper, or did he say that he would go to the bookkeeper and verify it?

A. At the time I told Schrock what was due me and pointed out to him what was due he went to the bookkeeper, Mr. Hunter, and consulted with him about the matter, drew his check and gave it to me, and then I handed in my resignation and went off and saw Mr. Farnsworth and Mr. Ligget, and told them I was now clear of the association, and that if they desired I would join with Mr. Ligget in this examination. The next morning, on the 9th, I went with Mr. Ligget to examine the Farmers' Mutual Live Stock Insurance Company. I was not there myself to make an examination of that company.

Q. We will pass that question at this time, Mr. Schively, and let it come up on the articles of impeachment in reference to that. I want you to keep to this Live Stock Association. When did you next see any of these people, and under what circumstances, after you had settled up and had gone with Ligget?

A. I am absolutely unable to say whether it was the following night or the next night.

Q. That would be immaterial.

A. It was within the next two days.

Q. What were the circumstances? What occurred?

A. I was ready to return to Olympia, and I went to the office of the Pacific Live Stock Association for the purpose of saying good-bye to them, of wishing them well; I thought that there was the best of feeling between us, as everybody had seemed to be satisfied, and when I reached the room there was an atmosphere present impossible to describe, and yet which gave me to know that there was something out of the way, and it never occurred to me that I was the cause of it. I thought probably something new had occurred among themselves.

Q. What occurred?

A. Mr. Schrock opened the door—here is the main office here [*indicating*]*—off to the right, as you enter; to the left as you go out is a small room in which the trustees hold their meetings. Mr. Schrock came out of the door and met me. He had a paper in his hand, I think. I said to him, "John, what is the trouble around here?" And he said to me, "It seems instead of our being indebted to you—instead of our having owed you two hundred and sixty dollars and some cents, you owed us four hundred dollars." Now, I said—that was a paralyzer—I said, "John, you know that is not so. You owed me and you paid me." I said, "I have had my settlement with you and you know that statement is not so. Where did you get that?" He said, "Well, here is the statement of the bookkeeper." I said, "I don't care what your bookkeeper states; you know this is not true. I don't care what your—what figures your bookkeeper presents." I never had any business with the bookkeeper. I never consulted the bookkeeper. The bookkeeper, Mr. Hunter and I, were warm friends outside of the office, but in that office we were very formal, because the bookkeeper was a brother of Mr. Hunter, the trustee, and we entered into no complications with him whatever. I said, "I don't care what the bookkeeper says, or what set of figures you bring me. You know I settled with you, and when we settled you gave me a check for \$260.50, and I showed you my account, and you and I were satisfied, and we squared the account between us—we were satisfied that that squared the account between us absolutely, actually and justly." He said, "Well, I don't just understand it myself, but here is what the bookkeeper has shown." I said, "What has the bookkeeper shown?" And then he showed me this paper that has been in controversy before this Senate for the last few days. I said, "Let us go through it together and see if we can straighten this out." So we took the statement and I said, "Why here is an amount, the first one, does not belong to me—two hundred dollars; you and Mr. Ward gave that to me for services before I was trustee. Here is four hundred dollars, and here is another four hundred dollars, and here is another," and so on. I said, "You know that you never gave me a check for four hundred dollars; you know that. I never have gotten a check from you or any one in this association for four hundred dollars. There is something wrong here, and you know it. Call off these figures and let us see if we cannot come to an understanding of them," and he began to give me certain amounts, and I said, "Now, look here; these figures don't mean anything, John. You and I never dealt in those amounts. We never dealt in a six-hundred-dollar amount, and we never dealt in a four-hundred-dollar amount. I never got a check for four hundred dollars, and I never got a check for six hundred dollars. Don't you know, as between you and me—don't you know that when you gave me that check for two hundred and sixty dollars the account was right between the association and myself?" He said, "I think so." Then I said, "You come with me before the board of trustees and say so." We went before the board of trustees and an explanation*



was made and a conversation had, and, as God is my helper, to the best of my knowledge, Mr. Bennington arose and said, "I knew that man was honest. I knew that the man would clear his name from these charges." I said, "Gentlemen, are you satisfied?" They all said, "Yes," and we all shook hands, and I walked away, and I never knew anything further about that matter until it was poked under my nose before the grand jury in the city of Spokane.

Q. Tell the senators when it was that you had the first intimation of a report being sent out that you were still indebted to this company.

A. I think it was the latter part of March. Some time in February Judge Whitson appointed Mr. Murray as receiver of the association.

BY THE PRESIDING OFFICER: At this time we will take a recess for five minutes.

Q. The last question was, "When was the first time that you heard anything about your being indebted to the Live Stock Association?"

A. After this occurrence?

Q. Yes?

A. Some time in February.

Q. What year?

A. Of March of the ensuing year, 1907. Mr. Murray was appointed by Judge Whitson, of the federal court, as the receiver of the Pacific Live Stock Association, and I saw Mr. Murray just about that time. Mr. Murray said to me, "John, I am having Mr. Ellis LeMaster expert the books of the Pacific Live Stock Association. Now, how much money did you receive from that association?" I said, "As a trustee or as an insurance official?" He said, "As a trustee." I said, "I was there three months"—or words to this effect—"I was there three months at \$400.00 a month and I received \$1,200.00 less two or three days." He said, "You are sure that was all you received?" I said, "That is all, Charlie—\$1,200.00 less two or three days." And that was the last that was said about the matter until the report of the receiver, Mr. Murray, was published, showing that I had received some—I forget what the amount was, but it was a much larger amount than I received. And the first time I was in Spokane, I think that I am correct in saying that—I would not swear to this—I went over to Spokane for the purpose of seeing Mr. Murray on the subject. I went over to the Great Northern depot to see Mr. Murray and I learned that he was sick at home. I immediately went to his home, and when I applied for admission I was informed that Mr. Murray was sick in bed. I said to the person who answered, "Will you please tell Mr. Murray that Mr. Schively wants to see him just for a moment or so." And I waited until my message was taken to Mr. Murray and the word was given me that Mr. Murray would see me. I went upstairs, and the moment I entered the door Charlie Murray said to me, "John, you lied to me." I said, "Charlie, I did not." He said, "Yes, you did, John. You got"—I think he said the exact terms, I am not positive of that, I think he said, "You got \$1,200.00 more"; but anyway he said that I had received much more than I told him. I said, "Charlie, I did not get the money." He said, "You did, John; the books show it." I said, "Then the books lie, and if you were not sick I would make you go right to the books and show me." Well, he said, "You go down and look for yourself." I said, "Very well, I will." On the way down from Charlie Murray's house, I stopped in at E. C. McDonald's office. E. C. McDonald was at that time the assistant attorney general. I thought to myself, I will

stop and see McDonald, as a state official. So I went to his office and I said, "Mac., I want to tell you something. Now, I received a certain amount of money from the Pacific Live Stock Association, and Charlie Murray's report, gotten out by Ellis LeMaster, is to the effect that I received a good deal more than that." Now I said, "Mac., I did not get that money. There is some mistake somewhere; and I want you to go with me as witness to be present at the interview that I am now about to hold as to that money." Mr. McDonald went with me to the office of the Pacific Live Stock Association. The affairs of it had now been given back to the hands of the trustees. When Mr. Murray made his report to Judge Whitson, Judge Whitson denied jurisdiction—would not accept Mr. Murray's report, because he said that—

By MR. MANAGER EDGE: I object.

By MR. ISRAEL: Never mind. Just go back to the Live Stock Association—back to the trustees.

A. Was back in the hands of the Pacific Live Stock Association. We went to the rooms—Mr. McDonald and myself, and Mr. Hunter; I am quite sure that it was Mr. Hunter; I am absolutely certain that it was not Paul Shallenberger, because he was occupied in some other business, so that it must have been Mr. Hunter—I said, "Hunter, tell me why you have charged this \$1,200.00 to me? What is that \$1,200.00?" "Why," he said, "That is for the payment of the Ward notes." I said, "What Ward notes?" He said, "The notes that were given when Ward was bought out." I said, "Why were they charged to me? I did not receive that money, did I?" He said, "No," but when the first note was paid I went to Mr. Schrock and said, 'How shall I enter this on the books—against Mr. Ward's account?'; and Schrock said, 'No, Mr. Ward is not employed here any longer'; and I said, 'How shall I enter them?' He said, 'Enter them against Schively. Schively has taken Ward's place.' I said, "That is a funny way to enter a transaction. Where are the notes?" And Mr. Hunter said Mr. Schrock had them. And we hunted Mr. Schrock up. I said, "Mr. Schrock, where are these notes that you talk about for \$1,200.00 that have been charged to me?" He said, "They are in the safe." I said, "Go get them. I want Mr. McDonald to see that that money was paid to Mr. Ward and not to me." And Mr. Schrock went and got the notes. I don't think that even then I took them in my hands. To the best of my knowledge, as the picture is now before my mind, Mr. Schrock brought the notes and said, "Here they are." And I said to McDonald, without touching them, "Mac., you look at those notes and see whether they were paid to me, or to Mr. Ward." It did not even then occur to me that my name was anywhere on those notes. It never entered my mind that my name was on those notes until I was charged with it before this grand jury. I was not dreaming of calling Mr. McDonald's attention, to the best of my knowledge, as to my signature. I said simply, "I wish you to see to whom that money was paid." And he looked and said, "It was paid to Mr. Ward." Now, I say, "Mac., you remember this. If it should ever come up in the future against me, if I should ever run for office or anything else," I say, "Mac., you remember this." McDonald said he would. There I thought the incident was closed until in the campaign the matter was up and Mr. Gandy said somebody was liable and the matter came on, and immediately after its coming up, I wrote to Mr. McDonald to the effect he had seen these notes and they were paid to Mr. Ward, and suggested to Mr. McDonald he should go to Mr. Gandy—

By MR. MANAGER EDGE: If the court please, I will have to object to the witness going so far away from the facts. These matters have nothing to do with the case.

BY MR. ISRAEL: It is on the charge of perjury, your honor.

BY MR. MANAGER EDGE: I don't object specifically, but I think the witness ought to be instructed to testify only as to matters under consideration.

BY THE PRESIDING OFFICER: Make your answer simply responsive to the question, Mr. Schively.

A. Well, I am endeavoring to do that.

BY MR. ISRAEL: Q. Well, the question to the witness was to proceed with a detailed statement of what occurred, your honor. Go on and state now.

A. Well then, it was a subject of criticism in the papers, and the campaign came on, and it was all brought out. I don't know what question you want—

Q. When were you next confronted or charged with the authorship of these notes—under what circumstances? When did you first hear of it?

A. Before the grand jury at Spokane.

Q. Yes, sir; how did you come to go before the grand jury? What occurred before that grand jury?

A. Well, I was testifying one evening before the investigating committee in the House chamber when somebody came and notified me—No, I beg your pardon, that was later.

Q. When did you go before the grand jury and under what circumstances?

A. I was in my office one day when the deputy sheriff—I think of Thurston county—came to me with a subpoena to appear before the grand jury at Spokane. I don't know that I ever received a document in my life with greater pleasure, because I thought that would be an opportunity for myself to be heard somewhere. I had no other avenue of communication. So I went over before the grand jury at Spokane. Now, Mr. Counsel and gentlemen, I don't know how to detail that experience. I don't know what you want. I know that I was tortured—

Q. Well, were you questioned regarding these notes? Were you questioned in that transaction regarding these notes?

A. Well, what I presumed to be the usual formality was gone through. I was asked my name, and if I was willing to testify, and I said I was perfectly willing; I wanted to testify, I did not know the scope of it; my idea was that I was now to explain to this grand jury everything that had happened with respect to the Pacific Live Stock Association and I began to make an explanation as any layman would. This was my first experience before a jury, with one single exception of five or ten minutes. And Mr. Donovan, who was on the stand a day or so ago, immediately interrupted me. Now, what that man did to me it is impossible for me to say in the line of questions and answers. He began to ask questions about the Pacific Live Stock Association, and how they occurred in chronological order, I—

Q. No, I don't expect you to remember, Mr. Schively.

A. That is impossible for me to say.

Q. Were you questioned regarding having made any notes?

A. He, in the course of it—some way, somehow—he asked me as to what arrangement had been made between the Live Stock Association and myself. I made the statement, very innocently and truthfully, that I was on a flat salary—or I don't think I used the word "flat"—that I was on a salary of \$400.00 a month. And immediately I noted that every juror sat up and began to look at me, and then Mr. Donovan made me repeat it. I think that in one form or another he made me repeat

that statement about a dozen times, and I asked what was the matter—I wanted to know. I said, "Are you doubting this?" or words to that effect—I am not presuming to give the exact language before this court. I am telling the thing as it occurred, to the best of my knowledge. And I would endeavor to explain, and each time he would bring me back, lawyer-like, to the point; and then the matter of the notes came up. He asked me if I had signed these notes. I said, "No, sir, not that I know of. I don't remember to have ever signed any notes." That has been absolutely clear in my mind from the first. I never have been able to assume an obligation of that nature and obligate myself on a proposition of that kind, that has been absolutely clear to my mind, and so I said to Mr. Donovan, "No." Then he looked at me very earnestly and said, "Are you sure that you never signed those notes?" And it was clear to my mind from the way that he asked me the question that he thought that I had signed the notes, and I stopped a moment to think over the matter. I said to myself, "Why should I sign these notes? I am not an officer—

BY MR. MANAGER EDGE: I object to that.

Q. Never mind; what did you answer?

A. Well, I argued it in my mind for a moment or so, and I said, "No, sir, I am perfectly clear on that point." And he drew that out of me every moment that I was before them for a day and a half—he tortured me to make me say other than—

Q. Did he try to make you say that you were on a millage basis?

A. He did; he tried in every conceivable way to make me confess that I was on a millage or commission basis and that I had given some document obligating myself. And finally, as a last resort, he brought this paper to me and I began as best I could some sort of an explanation. It evidently could not be clear, because Mr. Davis testified here the other day that what I said was not clear. I began to realize that it was not clear to any of us—the explanation I was making. I turned to them and said, "Gentlemen, as incredible as it may seem to you from that paper, the only thing I want to say to this grand jury—the only thing I want you to remember that I have said to this grand jury—is that I never received a single cent of that \$1,200.00 in money. I discovered that it was charged against me as a book account, but I want to say to you again and again that I never received a single cent of that money. I received \$1,200.00 from that company for salary, less two or three days, and I received no more, and if there is anything else there that indicates it, that is a mistake of some kind. I did not get it." And I thought the incident was ended when I was discharged from the grand jury. I returned home and discovered from the newspapers that there was an indictment for embezzlement against me, and I was subpoenaed and went to Spokane with the sheriff. As I stepped off the train at Spokane, I was met by the statement that that morning a charge of perjury had been put in against me and I said, "It is the greatest outrage that could be perpetrated against a citizen of this country!" Now, I don't want to appear dramatic in explanation of this, but that was a damned outrage against my manhood. I beg your pardon, gentlemen; I am not trying to work on anybody's sympathies here, on the floor or in the gallery. I am not trying to do that.

Q. In that grand jury room, had you been charged with having bought out Ward—you individually?

A. They asked me that. I told them, "No." That was a part of the discussion about the notes.

Q. Now, you heard the testimony of Mr. Ward?

A. I did.

Q. What did you say as to the purported conversation that he testifies occurred between you and him, in which you proposed to him to buy him out?

A. I have already told the gentlemen of the Senate—of the court—just exactly what occurred. When I heard Mr. Ward testify to the contrary, I was very much surprised to hear his testimony.

Q. Was it true?

A. It was not true—that is, in the main—that which referred to the conversation of my buying him out.

Q. Now, after you had been indicted for perjury, did you have any conversation with Mr. Schrock?

A. I beg pardon?

Q. After you had been indicted for perjury, did you meet and have any conversation with Mr. Schrock?

A. After the indictment for perjury I secured the services in Spokane of McDonald and Wrighter—I think the name is, from Lincoln county (he had moved into Spokane)—to look after my interests. I was before the court, and one day, in going up to Mr. McDonald's room, I met Mr. Schrock at the front door of The Rookery and Mr. Schrock said to me, "John"—or "Mr. Schively," however he addressed me—"What made you testify before the grand jury as to not having signed those notes?" "Well," I said, "John, I testified that way because I did not sign those notes." But he said, "You did sign them." I said, "John, I did not sign those notes." He said, "You did, and I saw you." "Well," I said, "Then if I signed them, I signed them, but my testimony was true. I do not remember signing those notes. I do not now remember having signed those notes." "Now," I said, "let's go upstairs and see McDonald and talk with him about it." We went up to McDonald's office. He happened to be alone in his office. I said, "Mac., Schrock says that I signed those notes, and I have brought him up here to talk to you about it." And I turned to Mr. Schrock, sitting at my left, and I said, "John," tell me the circumstances, so it will recall itself to my mind." "Well," he said "after we had signed those notes"—or words to that effect, and I think this is almost the exact language—"after these notes had been signed Ward said that in order to strengthen the notes he wanted you to sign them also." And you saw me sign them?" He said, "Yes." "Well, if you saw me sign them, I must have signed them, but the whole thing is a blank to my mind."

Q. Did Mr. McDonald hear this?

A. Mr. McDonald was present. I want to add to that, if I may, an incident before that grand jury. Mr. Donovan, or Mr. Pugh, wrote to Mr. Lee, or sent word to Mr. Lee, the assistant attorney general, asking for a certified copy of some of the records of the department; and I said to Mr. Lee (I was just then preparing to go to Spokane) that it would be impossible to prepare a certified copy of these documents, but that if it would cover the ground I would take the originals with me. And Mr. Lee thought that would certainly be satisfactory. So I took the originals of the documents and exhibits Mr. Donovan wanted; and, in order to make everything clear to the grand jury, I took a book of official letters and reports from the files of the insurance department over with me to show to the grand jury that this was a solvent concern, even when it went into the hands of the receiver—if properly managed; that it had paid a large amount of money, and the reports and letters concerning the entire official communications between the members of the association and the people in the state who were writing for information and so on; I had all these with me. I had the official files—a good many that had not been asked for by Mr. Donovan or Mr. Pugh—before me, with the intention of putting them before the grand jury, and when

I was through Mr. Donovan dismissed me, or Mr. Davis did, and I started to take these things up that had not been requested, or they had not allowed me to explain, or say anything about. Mr. Donovan reached forward and took them bodily from me and I have not seen any of them since.

BY MR. ISRAEL: Is that the way they handle official documents at Spokane?

BY MR. MANAGER EDGE: How is that?

BY MR. ISRAEL: Is that the way they handle official documents at Spokane?

Q. They were the official records of the insurance department?

A. The official records and correspondence of the insurance department.

Q. Did Donovan know that at the time he took them?

A. He did not appear to care what they were; if it were my purse it would have been the same.

Q. Had they been informed before what they were?

A. Nothing had been said about these. I had them there for the purpose—I attempted to make an explanation time and time again, and it was when I forced my way beyond the barriers that Mr. Donovan raised—just once, only once, and that was when in the most emphatic manner I could I disregarded him and in spite of his protest I said, "I want to say, as incredible as it may seem to this grand jury"—and then I told them what I said here.

Q. And he took these documents in your possession without any excuse or any receipt or any statement to you?

A. Absolutely.

Q. Took them forcibly away from you without your consent?

A. Yes.

BY MR. MANAGER EDGE: If the court please, I don't think this has anything to do with it.

BY MR. ISRAEL: Well, I don't care, Mr. Manager. That is far enough.

BY MR. MANAGER EDGE: If you have got any complaint, the court is over there, and open to any citizen of the state.

BY MR. ISRAEL: No, we have got a court here to which we will make our complaint of Mr. Donovan. This is the jurisdiction we will try Mr. Donovan in.

BY MR. MANAGER EDGE: You can try that after you get through with this case—not while we are trying it.

BY MR. ISRAEL: That is the intention. Now, with the permission of the court, I am going to pass from article 25, with the permission that if I have omitted anything in checking up and in the broken way in which we have taken it up yesterday and today, I be permitted to go back to it and examine him further.

Q. Mr. Schively, article 2 of this impeachment charge is directed to the entrance into this state by one Lebo of two companies, of the payment by him of \$100.00, and a promise to pay \$300.00 more, besides paying the statutory fees and two licenses of \$2.00 each—\$37.00 as to each company. You heard Mr. Lebo's statement regarding that transaction?

A. Yes, sir.

Q. In the interests of brevity and to save time, tell this Senate all about that Lebo transaction.

A. I had met Mr. Lebo a few years previously and was acquainted with him. He wrote to me from Chicago, asking information as to the entrance of the companies, and he received from the department the customary letter that we had been instructed to write under those circumstances, to the effect that the entrance fees—that all documents requisite to entering the state, to be filled out were forwarded as per the request, and the entrance fees would be \$235.00—\$35.00 statutory entrance fees and \$200.00 for the examination of securities and verification of report; that is, I imagine the customary letter was written to him. I do not know whether by myself or the clerk of the department. Mr. Lebo eventually appeared in the department in person, with reports of the companies, the statements made out, and said that he had entered into an agreement to enter these companies and wanted to know the cost. I referred him to the written correspondence on the cost. He said that it would very much hurt him to pay the \$400.00—the \$200.00 for each company—at this time; that he could do it, but it would leave him without any money with which to live, and he wanted to know if it would be possible to reduce that. I said, "Well, Mr. Lebo, I am going to consult the chief about that." Some eight years ago we came into the habit of calling Mr. Nichols, in the secretary of state's department, "the chief." I went and consulted Mr. Nichols and came and told Mr. Lebo that it wasn't the intention of the department to work any hardship on him, and that it was impossible to make the examination at the present time, and that he could pay some in advance—some advance on it. And he said he would give notes for the balance; that he could give \$100 and could give notes for the balance. I told him that I didn't want to take any notes—that we believed in his word, and that if he couldn't pay before the examination was to be made, he could pay at that time. Mr. Lebo paid the \$100.00 in advance on one of the companies and entered his two companies, and paid the statutory fee which was required to be paid at the time, and went back to Spokane and began business. Subsequently he wrote to me that, for some reason, he was going to resign his position as manager of the other company—to one of these companies—and as the examination had not been made, he would like to have his money back. And I wrote to him a letter, which is on file and would be better evidence than I can now give, denying his request. The next communication I had was from the attorney on the subject—his attorney. I then thought that the matter had reached serious proportions, and submitted it to Mr. Nichols. He said, "What do you think about it?" And I said, "It is necessary to pay that \$100, or have a law suit, and you can take your choice." He said, "The next company that comes in, or whenever you have the money, pay it." I said, "That money must be paid at once. There is one thing; I will write and see if the thing is as stated by Mr. Lebo. If it is, and is simply a matter of money, he ought to have the money"; that he ought not to be forced to a law suit on that question, for he was entitled to his money, as the company was going out of business and going out of the state. I wrote to the company and found out from the company that Mr. Lebo had paid the money out of his own pocket, and I went to Mr. Nichols and said that I thought it was just to pay it, and Mr. Nichols and myself both put up \$50 and paid it back to Mr. Lebo.

Q. Now, that brings us to this question as to why, and under what authority, or why, for what reason, you then exacted this \$200.00 advance fees for companies applying for admission to do business in the State of Washington, putting up their \$35 statutory fee for admission?

A. Now, I would like to be very explicit in that. Will you let me

have that report? [*Witness handed report.*] Up to 1904, inclusive, when these examinations were to be made, Mr. Nichols and myself, or Mr. Nichols and some other deputy that he would appoint, would go back to these companies and examine them. In 1904 the income of the department was \$89,521.15. In 1905 the income of the department was \$117,340.38. That is approximately, I think, an increase of \$27,000, and that was entailing a corresponding increase in the work of the department. The insurance force consisted of myself and the clerk and stenographer, Miss Ferguson.

Q. Miss Ferguson was both clerk and stenographer?

A. Both clerk and stenographer.

Q. There were not three of you—just the two?

A. Yes, sir, just the two. This entailed so much of an increase upon both of us that to do this work and make eastern trips for the department was a distinct impossibility. Now, a good many companies at that time and at the present time, and at all times—a good many new companies—are endeavoring to gain admission to the State of Washington. I want you to understand, gentlemen, that it is a much easier thing—and I must make this explanation in order to make it clear to the Senate—to keep a company out than it is to put it out after it once gets in.

By MR. LEE: Now, if the court please, we object to this long-involved explanation, with an attempt to introduce a lot of self-serving declarations. We are interested primarily here with this particular article and the specifications in this article, and we have a defense that it was under and by virtue of Mr. Nichols. Any testimony in that regard would be admissible, but to consume the time of this Senate with a long rambling, eloquent speech on the condition of the insurance department for the last eight years, I submit to your honor, is to no purpose.

By THE PRESIDING OFFICER: The objection will be overruled.

By MR. ISRAEL: Go ahead, Mr. Schively.

A. It is absolutely essential for the gentlemen of the Senate to understand this. Supposing a life company enters the state; a volume of insurance is written and then the company leaves the state, or is found to be insolvent. A great deal of insurance is written that cannot be written anywhere else. In the meantime, the one who has the policy has been sick or something of the kind. I simply make that explanation for the necessity of putting some barrier against a company coming in that isn't solvent—not only a company that isn't solvent, but it may be financially all right, technically all right, but its management may be poor, so that a great many things are required to be known. It was impossible to go back to the number of companies seeking and asking admission. I finally took the subject to Mr. Nichols and said, "I don't want to assume all of this responsibility, or any of this responsibility. I want you to let me know some means by which we can check this, or raise a barrier. It is impossible for me to go now. You must either go yourself or send somebody or raise some barrier." Well, he said, "Why can't we go examine them?" I said, "I can't; you go," and in the course of that conversation, we both knew—Mr. Nichols and myself—in the management of the department, both knew that the fact of the writing to companies that we would examine them, because that was the form of letter before this custom was adopted, had kept a number of companies from coming in; and in the course of that conversation, the idea was developed as to the charging an examination fee in advance and making it when we could find the time so to do.



Q. Now, after that did you take that question up with any proper officer of the state?

A. I am just proceeding to that. That question was then taken to the attorney general.

Q. Who was the attorney general?

A. Mr. John D. Atkinson. Mr. Nichols and myself were both present. I think that Mr. Nichols—I am willing to assert (you seem to be desirous of an exact assertion)—and I am quite willing to assert that Mr. Nichols had gone into the office of Mr. Atkinson and talked with him about some other matter when this matter was suggested, and I was sent for. For the fact of my happening into General Atkinson's office—

Q. Well, did you take up the matter with Atkinson?

A. It was brought up to General Atkinson and he was asked the question as to whether it was legal, within the law, to impose this examination fee in advance? Now, I don't remember Mr. Atkinson's exact language, but he answered it in the affirmative.

Q. That it would be legal to charge these companies an advance fee at the time of their application to enter the State of Washington, for their future examinations?

A. Yes, sir.

Q. And to examine them in the future?

A. Yes, sir.

Q. Now, after that, was there any departmental rule established under that authority?

A. Yes, sir.

Q. What was it?

A. Mr. Nichols and myself returned to my office, or his office, and I said to him, "Chief, what shall I charge as the advance rate; shall I take our pro-rating experience?" And he said, "Yes." It had been our experience in former visitations back east, by pro-rating the insurance, we arrived at the conclusion that \$200 was a just and equitable charge, and we adopted the flat rate of \$200. Mr. Nichols and myself adopted that rate in our office after our conversation with Mr. Atkinson. I want to be very clear—of that statement—because there was discussion about it in the investigating committee.

By MR. ISRAEL: Now, I desire to go on to another article here, and I am getting tired, and would ask the court to steal fifteen minutes at this time and adjourn here.

By MR. MANAGER EDGE: How long will it take you with this testimony?

By MR. ISRAEL: With the speed we are taking for this examination, if your cross-examination is not too lengthy, we ought to be through by noon Monday with this witness.

By MR. MANAGER EDGE: We might as well suspend.

By THE PRESIDING OFFICER: We will take a recess until next Monday morning.

At 4:45 p. m., the court of impeachment adjourned until 9:30 a. m., Monday morning, August 23, 1909.

SENATE CHAMBER,  
OLYMPIA, WASH., August 23, 1909.

The Senate, sitting as a court of impeachment, convened at 9:30 a. m., all members being present except Senators Graves and Nichols, excused.

BY THE PRESIDENT: Will Senator Booth, of King county, take the chair.

BY THE PRESIDING OFFICER: Are you ready, Mr. Israel?

BY MR. ISRAEL: Mr. Schively, take the stand.

*Direct Examination (Continued)*—

BY MR. ISRAEL: Q. Mr. Schively, when we suspended on Saturday evening you were testifying as to the reasons of the forming of a departmental rule as to the collecting of this two hundred dollars in advance for applying companies entering the state. What was the circumstance and reason, if there was any, for charging companies for that examination in the State of Washington, at the time they were examined, a flat sum of \$200?

A. What was that question?

[Question read.]

A. When we left Mr. Atkinson's office after we had this interview with him, Mr. Nichols and myself, then we went into consultation as to what this flat rate would be that we would charge in advance, and in the course of that conversation, when we settled upon the sum of \$200, the question arose as to the application of that rule to the companies in this state, and the fraternal law was adopted as the basis in connection with this two hundred dollars; now, in connection with this two-hundred-dollar flat rate which was determined upon, we should apply the two-hundred-dollar rate to the companies in this state, as well as the companies outside of this state.

Q. Why?

A. Because, as I have already indicated, under the fraternal law the maximum was put at two hundred dollars for fraternal companies, without a reserve, and four hundred dollars for companies with a reserve, and the decision was that if these fraternal companies should pay the two hundred dollars the sum would be just to the mutual and stock companies here in the state. You understand that this two hundred dollars was our limit. Whatever the expense might be, we could not charge more than that.

Q. That is for fraternal societies?

A. Yes, sir.

Q. Well, would the item of two hundred dollars necessarily cover the examination of any fraternal?

A. Not by any means. It might be much more than that.

Q. It might be much more than two hundred dollars?

A. Yes, sir.

Q. And in that event you would have to pay from what fund?

A. From our own pockets—at least, there was no provision for expense beyond that; that was the maximum limit of a fraternal company without a reserve.

Q. There were no conditions in that fraternal law as to the expense, actual expenses or traveling expenses?

A. No condition whatever.

Q. But there were conditions in the mutual and stock?

A. Yes.

Q. That is, they were formulated then as a rule of the department?

A. At that time, in that interview.

Q. I understand that after that you charged a uniform rate of two hundred dollars, whether it was fraternal, stock or mutual?

A. Yes.

Q. Have I interrogated you regarding article No. 2—with reference to Charles Lebo?

A. I think you did.

By Mr. LEE: You went over that.

By Mr. ISRAEL: I went over that Saturday, did I not?

By Mr. LEE: Yes, sir.

Q. Directing your attention to articles 2 and 4, as to the advance payment of the Boston Insurance Company, of Boston, Mass., and the Capital Life Insurance Company, of Colorado, in which it is charged, and you admit that the advance fee was paid, why have not those examinations been made?

A. It has been impossible, with the increasing work of the department, to make those examinations.

Q. I want you to tell the Senate in detail what you mean by it having been impossible—what the situation was; give it to the Senate as if they knew nothing about it; the situation that obtained at the time you made the collection, and has obtained since? What has the situation developed?

A. I think I have explained to the Senate as to why this advance fee was imposed.

Q. Now, we want to know why the examination was not made?

A. The examination was not made because there has not been time to make the examination. I have never had the opportunity.

Q. Now, Mr. Schively, that is exactly what I wanted to get at. Sketch to this Senate the facts that cause you to say you have not had time. Tell us about what the condition of the department has been from that time up to January, 1909?

A. Well, I have my book from which I read my testimony the other day.

Q. What is that book?

A. It is the Seventh Biennial Report of the Insurance Commissioner of the State of Washington.

Q. Made by Mr. Nichols and yourself?

A. Made by myself to Mr. Nichols and by Mr. Nichols to the legislature.

Q. Very well.

A. I testified to the effect that this tax was—advance fee—was imposed in 1905 after a consultation with the attorney general. I testified to the figures, that in 1904 the department received \$89,521.15; in 1905 the department received \$117,340.38; in 1906 the department received \$124,279.34; in 1907 the department received \$143,653.55; in 1908 the department received \$194,847.62. You can see that in 1905, when the plan was adopted, the increase was \$27,000 approximately over the year before, and in 1906 the increase was the difference between \$117,000 and \$124,000; that in 1907 the increase was the difference between \$124,000 and \$143,000, and that in 1908 the increase was the difference between \$143,000 and \$194,000.

Q. What was the increase between the first and the last date?

A. Somewhere in the vicinity of \$75,000.

Q. What difference did those increased payments or collections make in the work of the department?

A. It means a corresponding increase all along the line, in the issuing of licenses, and, further than that, within this period the majority of the companies organized in this state is covered; within that period nearly every company that has been organized in this state, now operating, was organized—a large majority of them.

Q. Can you approximately state how many companies came into the state and exhibited their reports for verification and permission to do business?

A. From 1904 on?

Q. Yes.

A. I could not say, sir.

Q. You made no examination as to that?

A. I have no examination as to that. I have entered into the state probably somewhere in the vicinity of 175 to 200 companies during my term as deputy insurance commissioner and insurance commissioner, and to segregate into periods would be impossible without consulting the records.

Q. Now then, what office force did the department have in 1904?

A. Myself as deputy and Miss Ferguson as clerk and stenographer.

Q. Was the volume of business at that time sufficient to keep yourself and your stenographer constantly engaged?

A. It was, yes, sir.

Q. How and when was the office force increased from that time from 1904 up to 1909?

A. At the recent session of the legislature—

Q. From 1904 up until that time?

A. In 1901 and 1902 I had the work all alone, without any assistance. Miss Ferguson came, I think, in 1903. I think it was at that session of the legislature an appropriation was made for a stenographer, and Miss Ferguson and myself, from 1903 to January, 1909, have conducted all the work of the department.

Q. Taking up now article No. 17, in which it is charged that you examined the Western Hardware & Implement Dealers' Mutual Fire Insurance Company, of Spokane, and demanded of one E. W. Evenson, for an examination, \$200, and actually collected \$100. You have heard Mr. Evenson's statement. Kindly tell the Senate your version of this affair.

A. I never demanded \$200 from Mr. Evenson. At the completion of the examination, when the question of charges came up, I said to Mr. Evenson, "Mr. Evenson, the usual charge is \$200 and the custom of the department is to pro rate this among the companies when it is possible. During my present trip to Spokane I have been examining another company. This will make the cost to each company to be \$100." I never demanded \$200 of Mr. Evenson.

Q. What was the character of the examination you gave him?

A. It was just as complete as I could possibly make it. The figures of this examination—I did not personally go fully and thoroughly into his accounts and balance them, and see that they properly balanced—Mr. Evenson had received from me prior to my visit a notification to the effect that I would be there at a certain time, and I think that in my notification to him I suggested to him that he have his report made. When I reached there he said he had had a complete auditing of his books by Mr. LeMaster. I asked him for this report, and I told him that I had thorough confidence in Mr. LeMaster's work; and from the report given to Mr. Evenson by Ellis LeMaster, and by Mr. Evenson to me,

I computed the financial part of it, and spent the major portion of my examination of the company with Mr. Evenson in talking over his manner and system of operation—in talking over his manner and system of reinsurance and keeping his policy records and registers, and so on along that line.

Q. How much time was consumed?

A. I went to Mr. Evenson's office two or three times before I finally saw him.

Q. Was there any one with you when you went?

A. Not at that time. Mr. Evenson, I think, at that time was preparing to move or was actually moving his office, and he accounted to me for his absence, so far as I remember, by saying that he was moving, or at least had some business. The fact remains that I called several times, and when I finally saw him I had with him the conversation that I have detailed. To the best of my memory, I was in Mr. Evenson's office somewhere between one and two hours.

Q. After getting to this data, did you prepare a report?

A. I did, from that data.

Q. Look at this and see if it is a copy of it. [*Handing witness paper.*]

A. [*Examining.*] To the best of my memory and knowledge, this is the copy of the report which I prepared from the report given and from my personal examination at Mr. Evenson's office.

Q. What leads you to believe that it is?

A. It is on the departmental paper—it contains facts which I know I discussed with Mr. Evenson. As to the figures being absolutely the same figures, that would be absolutely impossible for me to say or swear to after this length of time. I am satisfied it is part of the original findings of the insurance department. I do not see possibly how it could be a forgery, or—

By MR. ISRAEL: Mr. Secretary, will you please read it.

[*Marked "Article 17, Defendant's Exhibit A."*]

By THE SECRETARY: [*Reading.*] Insurance department, Olympia, Washington, August 5th, 1907. Honorable Sam H. Nichols, secretary of state and *ex-officio* insurance commissioner, State of Washington. Sir—Acting upon the invitation of the officers of the Washington Hardware & Implement Dealers' Mutual Fire Association, I visited Spokane under date of July 31st, for the purpose of examining this association and discovering its condition. This association was admitted under the mutual fire insurance laws of this state in January, 1906, having its headquarters in the city of Spokane. I found the association to be well managed and carefully and conservatively handled in every respect. The system of bookkeeping of this association, which is the result of the combined wisdom and experience of its secretary, E. W. Evenson, and Mr. Ellis LeMaster, is one of the most perfect I have ever seen. The following is the financial statement of the company as of June 31st, 1907: Net assets December 31st, 1906, \$5,816.45. Income: Total premiums received, \$11,515.46; received from all other sources, \$38.00; total income since December 31st, \$11,553.46; sum of both amounts, \$17,369.91. Disbursements: Total paid for fire losses, \$1,000; total paid officers and trustees, \$504.96; total paid office help, \$130.08; total of all other expenditures, \$10,216.08. (The above item includes cost of reinsurance and a dividend disbursement). Total disbursements, \$11,851.12. Balance, \$5,518.81. Assets: Cash in bank, \$1,898.75; premiums in process of collection, \$1,037.05; total liability of members, \$16,509.73; securities, \$3,000; value of office furniture, \$270.00; all other assets, \$1,127.40; total assets, \$23,842.93. Liabilities: Total

amount of unearned premiums, \$5,736.57; other liabilities, \$44.79; total liabilities, \$5,781.36. Miscellaneous: Total amount at risk December 31st, 1906, \$428,850.00; total risks added since, \$453,700.00; total risks canceled, withdrawn, or terminated, \$275,800.00; total amount at risk June 30th, 1907, \$606,750.00; total amount of reinsurance, \$417,800; largest amount of insurance carried on any single risk, \$1,000. The accounts of this association are carefully audited each month by Mr. Ellis LeMaster, an expert accountant of Spokane, which fact of itself to those who know Mr. LeMaster is one of the highest recommendations which could be given to the association. I wish to express my appreciation of the courtesy extended to me by the secretary of the association, Mr. E. W. Evenson, who spared no pains to give me a complete insight into the affairs of the company and its standing. It is a matter of congratulation to this department to discover the care with which Mr. Evenson is protecting the interests of his policyholders, as well as the safety of the association in the management of its affairs, and the select class of risks which he has assumed. Respectfully submitted.

Q. Now, Mr. Schively, was it the practice of the office to make these reports to the secretary every time an examination was made?

A. Yes, sir.

Q. I will next direct your attention to article 19, wherein it is charged that as deputy insurance commissioner, you examined the Farmers' Mutual Live Stock Company, of Spokane, Washington, and made your examination perfunctorily, and that it consumed less than half an hour, and that you charged \$100.00 for the examination. I will direct your attention first to that portion of the article and ask your explanation or version of it.

A. The fact of that examination, as I remember it, is that upon that occasion I was there for the purpose of examining two companies, this being one of them. I went to the office of the company. Mr. Marsh was the president; Mr. Morrill was the secretary. I think Mr. Lichty was the treasurer. When I went there, there were in the room, to the best of my knowledge, Mr. Farnsworth, the lady stenographer and bookkeeper, and one other gentleman. Whether this was Mr. Marsh, the president, or Mr. Morrill, the secretary, I am not able to say. We went thoroughly into the policy register, seeing the amount of insurance that had been written. The company had not transacted much business up to this point, except in the securing of pledges for insurance. We went into the matter thoroughly. The company was being either newly organized or absolutely organized, and we talked with each of them about the general matters pertaining to the company, and at the end of the examination and the interview, Mr. Farnsworth said to me, "We will now go to the office of Mr. Lichty." I do not remember Mr. Lichty having been in the room at all during any part of the examination. He may have been there. If so, it was incidental. And afterwards we went—Mr. Farnsworth said, "We will now go to Mr. Lichty's office and secure your payment for this examination." And my memory is that when we went to Mr. Lichty's office, I was there introduced to him by the president, and Mr. Farnsworth said, "We are indebted to Mr. Schively, Mr. Lichty, in the sum of \$100.00 for the examination which he has just been conducting." Mr. Lichty drew his check and handed it to me, and we passed a few general remarks and I left the room. To the best of my memory, that is my entire experience with Mr. Lichty.

Q. Now, Mr. Lichty, here on the witness stand, before this Senate, under direct examination, was asked this question: "Q. State to the Senate what was said and done at that time—what Mr. Schively said and what he did? A. Well, Mr. Schively said that his usual charge

was \$200.00, but Mr. Farnsworth, our president, told him that he ought to cut that down for this company. It was just beginning business and it would be a little hard on the company to pay such a big fee. And our president thought he did good work to have it cut down to \$100.00." In the first place, was Mr. Farnsworth at that time president of this company?

A. Mr. Farnsworth was not the president.

Q. Who was the president?

A. Mr. Marsh. And since this testimony was given and published in the paper, I have received a letter and have it in my pocket from Mr. Marsh, to that effect.

BY MR. MANAGER EDGE: I object.

Q. Never mind. Let Mr. Marsh tell his own story. - Answer my question, Mr. Schively.

A. Mr. Marsh was the president, Mr. Morrill was the secretary, Mr. Farnsworth was the general manager.

Q. And Mr. Lichty?

A. Was the treasurer.

Q. Now then, in making your examination, had you had anything to do with Mr. Marsh in regard to it?

A. I think, to the best of my memory, either Mr. Marsh or Mr. Morrill was present in the room. My conversation as to that, the financial part, was all with Mr. Farnsworth, the general manager.

Q. Now, was the room in which you found the treasurer, Lichty, to give you the check, the same room in which the examination was made?

A. It was not the same room. It was either in another part of the same building or in a different building.

Q. Then when Lichty testifies that the examination was made in his office in the presence of Farnsworth, it is not true?

A. It is absolutely untrue.

Q. Now then, what have you to say as to the part of his answer as to Mr. Farnsworth asking you as to your charge for the examination in his presence?

A. So far as I remember, the only thing was that—

Q. Well now, getting at the question, the question was, where was, in fact, a voucher for that check made out?

A. In Mr. Lichty's office, after the examination was completed.

Q. And after you had gone to Lichty's office?

A. Yes, sir.

Q. What conversation, if any, occurred in Lichty's office regarding the amount of the charge?

A. I do not remember that a single word was said with respect to the amount of the charge except that Farnsworth said, "Mr. Lichty, we owe Mr. Schively \$100.00 for this examination." Mr. Lichty gave me his check for that amount.

Q. Where was it, do you remember, that you informed Farnsworth of that fact?

A. In Mr. Farnsworth's office at the time or in some part of that interview during the examination.

Q. But before you went to Lichty's office?

A. Before—it was entirely consummated before we went to Lichty's office.

Q. Now, the second part of this article 19 is a charge that on October 9th, E. E. Ligget, as insurance commissioner of the State of Idaho, and yourself, as deputy insurance commissioner of this state,

made a joint examination of the affairs of said Farmers' Mutual Live Stock Insurance Company, for which examination a charge of \$300.00 was made, and a check issued by the company to Ligget, on the understanding that you were to receive one-half of the \$300.00. You have heard the testimony in regard to that. Please give the Senate your version of that affair?

A. My memory is that I met Mr. Farnsworth on the streets at Spokane. At that time I was completing my settlement with the Pacific Live Stock Association. And Mr. Farnsworth said that they were desirous of entering Idaho. There was some question as to either entering Idaho or their standing in Idaho, and for that reason the insurance commissioner of Idaho was present. He wanted me to be present at that examination to protect their interests from the standpoint of this state—to help them in their being examined by Mr. Ligget. I told him that it would be a doubtful policy, or words to this effect, at that moment and until I had completed my severance from the Pacific Live Stock Association, which would certainly occur in a scope of 24 hours. And he said that if he would speak to Mr. Ligget and have Mr. Ligget stop over that would I be willing then to join with Mr. Ligget, and I said I would. I subsequently saw Mr. Ligget and he told me that he was there for the purpose of examining the company—the other live stock company—and that they were desirous of my being associated with him and he said, "Are you willing to assist me in this?"—or "join me in this," or words to that effect. And I told him practically the same thing, that I would be through with the Pacific Live Stock Association within at least 24 hours and that I would then cheerfully join him. The work was Mr. Ligget's. The arrangement between the Idaho department and the association was all comprehensive as to the financial part of it. I was to assist Mr. Ligget and receive my pay from Mr. Ligget, and Mr. Ligget paid me after he had been paid by the association. And I gave no voucher to anybody, to the best of my memory and knowledge, to Mr. Ligget or to the company, or to any other person, and was not called on to do so—was not asked to do so; don't think I did so.

Q. Whom did the company settle with?

A. Mr. Ligget.

Q. Did you take any part in the settlement?

A. Except after the settlement was over, Mr. Ligget paid me.

Q. Did you take any part in the settlement between Ligget and the company?

A. Not to my knowledge.

Q. Were you present when the settlement was made?

A. I think I was.

Q. Were you with Ligget when the check was cashed?

A. I think I was.

Q. Who was the other Ligget on the check, indorsing the check?

A. I do not know.

Q. Do you know whether his wife went in with him there at that time?

A. I do not know.

Q. Did you hear any of the conversation between Evenson and the Idaho commissioner at the time that the Idaho commissioner made the charge of \$300.00?

A. Mr. Evenson was not present.

Q. Who was it made with?

A. Mr. Farnsworth. Will you ask your question again? [*Last preceding question read.*] You mean Farnsworth?



Q. Oh, yes, Farnsworth?

A. I do not remember about that. I seem to have been present at the entire transaction. My memory is that I was present. I do not know of anything that occurred.

Q. Was Lichty present during the transaction?

A. I do not remember to have ever met Mr. Lichty except once. That was when he paid me the \$100. Whether he was present at this transaction or not, I cannot say. The only one I remember to have been present at this subsequent transaction with Mr. Ligget is Mr. Farnsworth.

Q. Lichty testified before this Senate: "He and Mr. Ligget, insurance commissioner of Idaho, came in together. We had not entered the State of Idaho with our company, and they came in together for the purpose of looking over the company's affairs, as we wanted to enter the State of Idaho. Our president, I think, solicited the efforts of Mr. Schively to help us to get into the State of Idaho with Mr. Ligget; and the president came into my office with these two gentlemen and introduced them and asked me to make out a check for \$300 to pay these two gentlemen for their services, \$150 apiece. I made out the check. Q. Did you make out one check or two? A. One check for \$300. Q. State what understanding, if any, you had at that time as to compensation that he should receive." I presume the counsel evidently meant yourself and the witness evidently understood counsel meant himself, because "he" would apply to either Ligget or Schively; but he answered by saying: "I asked Mr. Schively who I was to make the check to. They said they only wanted one check, and he told me to make it to Mr. Ligget, and I did, with the understanding it was to be divided equally between these two commissioners." Now, what is your recollection of the truthfulness of that testimony?

A. My recollection of that testimony is that the financial part as between Mr. Ligget and the association was between the Idaho department and the association. I do not remember to have figured in the financial part at all, except after Mr. Ligget had been paid and he settled with me.

Q. Well, try and remember whether you stated to this Lichty at that time to make out the checks for both of you to one person?

A. That would be natural, that Mr. Lichty would ask me that question, as I was his own insurance commissioner, and that I should respond, "This is the examination of the Idaho department, and the check should be made to Mr. Ligget." That would be the natural answer. Whether that occurred or not I do not know.

Q. Did you have any hand in fixing the amount of the compensation that would be charged by the Idaho commissioner for this examination?

A. Not to my knowledge.

Q. Did you hear the sufficiency of the charge or the exorbitancy of the charge questioned by any one in the office when it was made?

A. I did not.

Q. Did you discuss with the Idaho commissioner at that time the charges made by his department— No, I will withdraw that, it would not be competent. How much time was devoted by Ligget to his examination?

A. I do not remember.

Q. Do you remember what it consisted of?

A. I do not remember. That was Mr. Ligget's examination. I was there to protect the company's interests and to urge my belief in the solvency and goodness of the people back of it.

Q. By reason of the examination you had already made?

A. By reason of the fact that it was already one of our home companies.

Q. Article 20 is directed to a charge of \$200.00 for examination of the Walla Walla Fire Insurance Company, on July 29, 1907. You have heard the testimony of the gentleman who was secretary of that company, and who says you were not present at the time of the examination, if I remember. Kindly give the Senate your version of this matter.

A. The law under which the Walla Walla Fire Insurance Company was organized required a capitalization subscribed of at least \$100,000.00, with \$50,000.00 paid in cash. That examination was for the purpose of verifying that fact, and also for the purpose of talking over with the officials of the company the desire of the company to enter other states. The examination was as complete and perfect as it could possibly be made, to the best of my belief. I examined thoroughly the securities of the company. I went to the bank; I don't know whether it is the Elam bank or whether Mr. Elam was the principal man, but I am satisfied that Mr. Elam was the man I saw at the bank. I asked Mr. Elam at the bank if they had the money there they said they had, and he said yes and gave me a note, I think, to that effect. He did not put the money up before me that I should count it, but there appeared to me to be at least that much money before one in the bank. I could not discriminate as to how much of this money belonged to the Walla Walla Fire Insurance Company and how much to other depositors, but he told me that they had that amount of money. Then Mr. Holloway, the president, took me around, too, among the trustees and directors in the city and introduced me to them personally. I talked with them personally, as to whether they were directors or trustees and if they had invested their money in this and were satisfied as to the way it was working, and various questions of that kind. I discovered that these men were responsible men in that community. I was taken around by Mr. Parker in his automobile to be shown the investments of the company in the city. The examination was just as perfect and complete and thorough as could possibly be made. To the best of my memory, I was there two or three days in the transaction of the business.

Q. Now, aside from the examination to satisfy yourself as to this company and as to its solvency and right to do business within the State of Washington, was there or was there not any discussion at that time with any one as to this company getting into New York?

A. The discussion as to getting into New York and other states at that time was not so full and free and the effort was not so pronounced on the part of the company as it was on my subsequent visit.

Q. All right. What occurred on your subsequent visit?

A. The subsequent visit I was sent for by Mr. Holloway, the president. He desired to enter some fourteen or fifteen states, New York being the principal one. The basis of insurance reserve in the State of Washington is forty per cent, and in the State of New York is fifty per cent. The report blank as furnished by this department would therefore be on a forty per cent. basis of insurance reserve and with New York and a number of other departments on fifty per cent. The report to be made to the New York department would, therefore, on this one item, differ on this as to ten per cent. insurance reserve. This was one of the features that Mr. Holloway wanted me to overcome. He wanted my advice on the subject, and my assistance in preparing not only a blank for the New York department, but for fourteen or fifteen others. I am inclined to think that the Walla Walla Fire Insurance Company had entered all told some twenty-one states, and he desired me there for the purpose of aiding him to readjust this, and I said to

him, "Put the whole thing on a fifty per cent. basis and that will cover your embarrassment." That was one of the points I helped him.

Q. Were there other things, without detailing as to any of them?

A. There were a number of others.

Q. Were you compensated on that?

A. I was.

Q. By whom?

A. By. Mr. Holloway. Upon that occasion not a word was said as to costs or anything else. At the conclusion of the examination, when I was preparing to come away, Mr. Holloway simply handed me a check for \$200.00. Nothing whatever was said, not a word, as to what the costs or expense would be.

Q. And you took it, covering everything that you had done both as an insurance commissioner and as an individual?

A. Yes, sir.

Q. You are charged by article 21 with having on May 7th received from the Union Guaranty Association, of Portland, Oregon, the arbitrary sum of \$200.00 to cover an examination that was perfunctory and occupied but a short time. To this item has been directed no testimony, excepting to bring a gentleman here who has a receipt for this examination and the voucher and who says he discovered it in the files of the office. Now, if you remember this transaction, I wish you would tell the Senate all about it, and who the gentleman was with whom you did business, and where that gentleman is at the present time.

A. There was a gentleman in the city of Portland by the name of H. D. Wagon—W-a-g-n-o-n—who had organized a fraternal, protective association, one of these fraternal societies; and he was operating that fraternal society. He was, in the course of his operation of that society, doing a liability business, or writing blanket policies, to use a technical term. The fraternal law of the state requires that a fraternal association shall have at least one lodge in the state. Now, I met Mr. Wagon at one time and said to him, "Mr. Wagon, I don't know whether you are doing it innocently or not, but you are violating the fraternal law of this state." And he asked, "In what respect, Mr. Schively?" I said, "Have you a lodge organized in this state? Are you issuing policies to an individual as a member of that lodge? If not, you are violating the laws of the state. The fraternal law requires that you have a lodge and the policies be issued through that lodge to the members who have been subjected to a physical examination and have gone through all of the preliminaries dependent upon the joining." Well, he said, "I did not just take the law in, Mr. Schively. I am not doing that. I am writing blanket policies." And he said, "How can I get out of this?" Now, I am not swearing to exact words—

Q. No, no; give us the balance of the conversation and let us get along.

A. Mr. Wagon wanted to know how he could get out of that. I said, "I only know of one or two ways: You can either organize a lodge and make these people members or you can organize a stock company." And he wanted to know how much would be required to organize a stock company and various other items, and he said, "I can do that." And he then, I think, shortly after that, organized the Union Guaranty Association as a stock company. And when he came to make his report as a stock company to the department, he wrote, asking me to come down, and he organized, at the end of the year, I think, or whenever the report was to be submitted to the department; he wanted me to come and not only assist him in making

the report, but he was desirous of entering the State of Idaho or Montana or some other state, and he wanted me to assist him in preparing his report and other papers, and to that end he wrote me several times, I think, and several times I told him I would go as soon as possible. I happened to be in Portland and met Mr. Wagnon, and he said, "Now, that you are here, won't you come and help us in that matter?" I said, "Well, I will do so before I leave the city." Before leaving the city, I went to Mr. Wagnon's office, examined his company, told him how to segregate his different characters of business—health, accident, liability and so on—and showed him, as best I could, how to prepare his reports for the submission to this other state which he desired to enter, and did various other things in the line of not only examining his company, but giving him advice, and showing him how to make out his report. There were two gentlemen in the office, I think, nearly all the time—Mr. Wagnon and his son, H. D. Wagnon, Jr.—they were in the room nearly all of the time.

Q. Is that Mr. Wagnon sitting up there? [*Counsel points to balcony.*]

A. This gentleman here is Mr. Wagnon.

Q. And for all these services you made a charge of what amount?

A. \$200.00.

Q. Article 22 charges you with having received \$50 from the Falls City Insurance Company, of Spokane, which is alleged to have been arbitrary. State to the Senate first—that is, state to the Senate why you didn't charge more—why you didn't charge the flat rate of \$200, and why you only charged them \$50?

A. This visit to the Falls City Fire Insurance Company was for the purpose of discovering if the Falls City Fire Insurance Company had the requisite \$50,000, justifying the department in having issued its certificate of authority. The company was new—had transacted very little business. The purpose of the examination was not to go into a large volume of business, because the company didn't have that, but to discover its possession of \$50,000 paid in on its capital stock. It would be necessary subsequently to complete the examination or to give the company a thorough examination as to the business it had transacted, its business methods, and, knowing that a subsequent examination was to be had, I charged what I conceived to be actual expenses, which amounted to \$50.

Q. What was your intention as to the balance?

A. That that should be paid when the thorough examination was given.

Q. Why didn't you make a thorough examination at that time?

A. Because there was nothing to examine outside of the security of the company.

Q. It wasn't ready for examination?

A. It wasn't ready for examination.

Q. Now, the 23d article relates to the requirement of \$235 from the Atlas Company, of Des Moines, Iowa, and the correspondence with C. S. Best, and the allegation finally stated that Mr. Best or the company would not be charged the advanced fee, or any company that would ask to be entered by Mr. Best. State to the Senate your version of this matter, and any explanation that there was or is to make as to why Best's companies should not be compelled to pay the advance fee of \$200 that had been determined for all companies applying for admission to the state?

A. I don't remember having ever had a conversation with Mr. Best on the subject of the Atlas Insurance Company. I remember to have had a conversation in that respect as to a company from Virginia

which Mr. Best entered for the transaction of business in this state, and which is now transacting business in this state. I may have had that; during the conversation the Atlas Insurance Company may have been included, but I don't remember the Atlas Insurance Company in connection with Mr. Best.

Q. What was the matter in connection with Mr. Best as to giving these two-hundred-dollar fees; that is what I want to know?

A. I had a conversation with Mr. Best along that line, and Mr. Best wanted to know if that examination fee would be imposed in advance; why it was to be imposed in advance, and a general conversation was held on the subject. I don't remember the details of the general conversation, but I do remember having said to Mr. Best that "if I had known that you were recommending a new company or intended to manage the company, or introduce a company, I would not have thought of imposing this in advance as a barrier."

Q. Why?

A. Because the Best Insurance Reports, one of which was previously shown to this Senate, stands in the relation to insurance the same as Dunn and Bradstreet do to commerce. Whenever we are contemplating entering a company, or whenever a company seeks to enter this state, the department immediately turns to Best Reports and sees what the Report has to say about the company. If the Best Reports are unfavorable to the company, that ends the transaction immediately. If it is favorable to the company, the department then proceeds with the general routine work towards the admission of the company. Mr. Best, with whom I conversed and who testified the other day, is a brother of the president of the company, and one of the compilers of that book, and he is an expert on that subject and is as well acquainted, if not better so, with that work than any one in the State of Washington, or any one connected with the average department in the country, if not all of them. He is an expert along that line, and I simply accorded to him the courtesy of his reputation in this nature, and said to him, "If you are going to be the manager of these companies in this state, the advance fee will not be necessary. We are assured of the fact that that will be a good company, and when we go to examine it, we will not be met with the statement that the company will not pay the cost of it."

Q. Then the correspondence referred to here in the record and introduced by Mr. Best regarding the Atlas Insurance Company, although not recalled to your recollection—the \$200 was, by reason of this reputation of Best's, that is the reason it was withdrawn—is that the idea?

A. Absolutely and entirely. I didn't know Mr. Best personally other than to know that he represented himself as a Best related to these people.

Q. State whether the Atlas Insurance Company has since been entered in this state?

A. The Atlas Insurance Company has since been entered in this state by Mr. McBurney.

Q. Who is Mr. McBurney?

A. He is president of the North Coast Fire Insurance Company, of Seattle.

Q. In article 24, where you are charged among other things with having made a double examination of the Pacific Live Stock Association, of Spokane, on which there does not seem to have been offered any evidence, you are charged with having written on November 5, 1906, a letter to W. T. Melvin, of Everett, Washington, in which you stated that the association was one of the most reliable and stable live stock

associations in the state, and you are charged with well knowing at the time of the writing of this letter that this association was insolvent. You have admitted in your answer that you wrote this letter. What have you to say as to why you stated to Melvin that the company was reliable and stable, and what have you to say that you stated that—that you knew at the time that the company was insolvent; what was the fact as to its solvency or insolvency at the time you wrote the letter? That embraces three questions in one; I desire an answer to each of them.

A. What was the first question?

*[Question repeated by the stenographer.]*

Q. I believed then and I believe now that at that time the Pacific Live Stock Association was thoroughly solvent. The Pacific Live Stock Association had large assets over all of its liabilities; it only needed two things—proper management and the ability to realize on its assets. It was thoroughly solvent, to the best of my knowledge and belief and information. It needed good management and the ability to realize upon its assets, either by the collection of the notes that it had or by the ability to borrow money on these notes, to collect on its assets. It was a splendid opportunity. It had the field; it had the agency force; it had experienced agents in the field—

BY MR. MANAGER EDGE: Now, I think the witness might confine himself a little more closely.

BY THE PRESIDING OFFICER: I think it is responsive. Proceed.

BY MR. ISRAEL: Q. Counsel has no right to interrupt you in answering why you stated—the witness is answering to this portion of the charge, that he represented that it was reliable and stable. Now, you were explaining why it was reliable and stable when you were interrupted?

A. It was reliable and stable, lacking these two elements to complete success—good management and realization on its assets held by the company. It had a good agency force; it had a good reputation; it had paid during my time—some part of my time—it had paid every liability on its claims up to the ninety-day limit, to the best of my knowledge and belief. And when I wrote that letter to Mr. Melvin, I wrote it honestly and earnestly; I believed it then and I believe it now, that the only two things necessary to make it one of the great successes of this state was proper management and ability to realize on its assets. If it couldn't do that, it must go to the wall; if it could do that, it would be a great success.

Q. Now, do you remember the sitting of the legislature in 1907?

A. Yes, sir.

Q. Do you remember the personnel of the appropriation committee of the House and Senate at that time?

BY MR. LEE: I object; whether he remembers it or not, it is absolutely immaterial.

BY THE PRESIDING OFFICER: I think we will let him ask one or two of these questions to determine its materiality.

BY MR. ISRAEL: Do you remember the personnel of the House committee?

A. I remember the chairman more than any one else. I didn't deal with the House committee; I dealt largely with the Senate committee.

Q. Do you remember the personnel of the Senate committee?

A. Largely.

Q. Do you remember whether or not at that time Mr. Veness was a member of the committee?

A. He was chairman, I think.

Q. Do you remember whether Mr. Booth was a member?

A. I don't remember as to Mr. Booth. I remember—

Q. Do you remember whether Mr. Piper was a member.

A. Mr. Piper was.

Q. Mr. Paulhamus?

A. Mr. Paulhamus, and Mr. Stevenson, and Mr. Polson.

Q. Mr. Rosenhaupt?

A. I don't remember about Mr. Rosenhaupt; he was a member at this session, but before that I don't know.

Q. Do you remember whether or not you were before that committee to have an appropriation to increase the force of the insurance commissioner?

A. I think I had been a beggar before every appropriation committee.

Q. Do you remember whether you were before that committee?

A. Yes.

Q. And whether or not before that committee you were examined by Mr. Paulhamus and the members of the committee and in the examination testified to these departmental rules—that the secretary of state was charging these flat rates?

A. I don't thing the question of flat rates came up at all. I don't remember its ever having come up before any appropriation committee. I remember two years ago, in 1907, when Mr. Nichols and myself—

BY MR. LEE: Now, I object to that; the witness has said that he doesn't remember of its ever having come up—

A. The flat rate never did, the pro-rating did. I explained in the course of my address to the appropriation committee that in these advance collections and so on it was the custom of the department in going back east to examine companies and charge a rate of \$200, which was, out of our experience the pro-rating among various companies during our visits. At that session when I appeared, I was questioned by various members of the appropriation committee, and I amplified thoroughly before that committee on that point of our positions and our custom in charging.

Q. That was for the purpose of influencing the committee to give you money to make the examinations—to make more?

A. We wanted a larger force in the department. We wanted a larger appropriation and we wanted assistance. On this one point I was talking to the appropriation committee, telling my embarrassment as a deputy insurance commissioner.

Q. Were you or were you not explaining to the committee that you could not do the examining that was ahead of you with the force you had?

A. I don't remember whether that was the point at issue or not. I was showing to the committee my helplessness in performing this increased work.

Q. Did you get any further appropriation than you had before?

A. If so, it was only a few hundred dollars on stamps or something; I don't remember that there was any increase at all.

Q. I meant to permit an increase in the force?

A. No, sir.

BY MR. ISRAEL: I would like to have about five minutes' recess

to consult with Mr. Schively as to matters that I may have omitted, and I think that I am ready to turn him over.

BY THE PRESIDING OFFICER: The court will take a recess for five minutes.

BY MR. ISRAEL: Q. Mr. Schively, since recess have you consulted the records of the insurance department for the purpose of ascertaining the number of companies that entered the State of Washington to do business?

A. I have.

Q. Especially as to since 1905—between 1905 and 1909—January, 1909?

A. I have consulted as to the companies admitted since 1905.

Q. And until 1909?

A. Yes, sir.

Q. Have you segregated the computations so as to say how many companies were entered from 1905 to January, 1909?

A. Yes, sir.

Q. How many?

A. One hundred and eighty-two.

Q. One hundred and eighty-two companies?

A. Yes, sir.

Q. Now, reverting to the discussion with Mr. Nichols as to the putting in force of the examination—advance examination—fee, \$200, to be collected at the time the company applied to come into the state, to cover future examination, that sum being arrived at from the past experience in visiting the eastern states, what, if any, arrangement was made between the secretary of state and yourself as to the disposal of that money when received?

A. An arrangement was made between the secretary of state and myself that when this money was received each one of us should receive half of it, and that when only one went out to complete or make the examination, each one of us should put up our own expenses.

Q. What would be the result if one paid more than another?

A. If one paid more than another, he should reimburse the one so paying.

Q. In 1907 the Miller bill was passed, changing the system of the future examination of companies, and the record shows—

BY MR. LEE: 1907 or 1909?

BY MR. ISRAEL: 1907 the Miller bill was passed.

BY MR. SCHIVELY: 1909—this year.

BY MR. ISRAEL: That is true. In 1907 the office, not the Miller bill—the office of insurance commissioner—was taken out of the hands of the secretary of state as *ex-officio*, and made an independent office.

A. When?

Q. In 1907?

A. No, sir, in January of this year, 1909.

Q. When was the bill passed that created the separate office of state insurance commissioner?

A. The bill was passed in 1907.

Q. That is what I am getting at—creating a separate office?

A. Yes.

Q. Now, you were selected to the office in the fall of 1908?

A. Yes, sir.



Q. Now, after 1907, with the knowledge that the office of insurance commissioner would after 1909 be a distinctive office, why did the secretary of state and yourself continue to collect these advance fees?

A. Because I understood that the work of the department would be cleared off before it was transferred to Mr. Nichols' successor.

Q. Including all of these examinations?

A. Certainly.

Q. In the fall of 1908, after the election, it appears from the records and articles of impeachment that this examination fee was not further charged. What, if anything, was the reason of that?

A. The advance examination fee?

Q. Yes.

A. It was charged.

Q. Why did you not make the examinations?

A. It was the intention of the department at all times to complete all such unfinished work of the department. That was the intention of Mr. Nichols and myself. When I was elected to the office, I fully determined—it has always been my determination—either as deputy insurance commissioner or insurance commissioner, so far as it lay within my power, to make those examinations; and after I became elected as insurance commissioner, I more than ever determined that those examinations should be made, not at the expense of the company which had already paid, and the state being in no way involved in the expense of examinations. The state has never been involved in the question of examinations financially.

Q. Who was to pay for the examinations?

A. These examinations, if made by Mr. Nichols and myself—

Q. I mean after you came to this determination, you and the insurance commissioner, whence the money was to come?

A. This is my determination, that I was to see that these examinations were made, and that if I personally lost that money I would expect Mr. Nichols to return that amount to make me good, so far as his half was concerned.

Q. Why did you not make the examinations since the 1st of January, 1909?

A. I have not made those examinations because I took office on the 13th of January. Until some time in March I was present at the session of the legislature. Immediately after the conclusion of the session of the legislature an investigating committee was appointed to look into the affairs of the various offices of state. That kept me here two months or longer, and shortly after the special session of the legislature was called, and intervening between these two events was my being summoned before the grand jury at Spokane. I have been very busy and have had too much—have had so much to attend to with these other matters—but if I am permitted, it is my intention, it has always been my intention, to make this examination—these examinations.

Q. And not to make any further charge against the companies?

A. Certainly not. They have the receipt that the examination expense has been paid.

Q. After you were elected insurance commissioner, and during the meeting of the legislature of 1909, there was enacted and put upon the statute books of this state the so-called Miller bill, which by its wording is a transfer of this entire matter into the office of the auditor and the treasurer of the State of Washington. What, if any, connection did you have with the preparation and drawing and passing of the Miller bill?

BY MR. LEE: Now, I will have to object to this. This examination has gone far enough. Now, we are getting down to a discussion of current legislation passed by the last legislature. Counsel is about to attempt to introduce a self-serving declaration. So far, we have not objected, because the testimony he has already introduced along this line has been just what we wanted. But at this time I submit to your honor that this is absolutely irrelevant, incompetent and immaterial, whether or not the Miller bill was passed or not, or whether or not Mr. Schively had anything to do with the passage, because he was governed at the time of these alleged offenses by the existing laws, and I submit that in no way can this be competent.

BY THE PRESIDING OFFICER: There is no question but what in a court of law, applying the strict rules of evidence, this would be immaterial. It is a question of whether or not we ought to allow it to go in on the question of good faith, and the court is of the opinion that is what it is for, on the part of the respondent. That is your idea, Mr. Israel?

BY MR. ISRAEL: The idea is to show the lack of criminal intent.

BY THE PRESIDING OFFICER: The chair is inclined to extend every courtesy to the respondent in this case, and, while your objection is technically correct, we will go into this for four or five minutes any way.

Q. Briefly, Mr. Schively.

A. I do not know how to cite the incidents of the Miller bill without stating that there was a new life code being introduced which led up to my activity in the Miller bill. I was insisting upon it, that in the new life code, the question of the collection of fees and itemized bills and so on should be taken out of the hands of the insurance department, in order that the insurance department might not be subjected to this criticism. That resulted in my going with a draft of a bill, and seeing that it was not in the life insurance code, but, thinking it might not apply to all other characters of companies, it resulted in myself, to the best of my knowledge, drafting a bill and putting in the items that should be in a bill. I took this to Mr. Lee, I am quite sure, the assistant attorney general, with the request that he approve such a bill, and I am firmly of the impression that Mr. Lee did approve such a bill. Whether it was the Miller bill or not I am unable to say, but it finally appeared before the House of Representatives.

Q. Along the same lines?

A. Yes, absolutely along the same lines.

Q. Go ahead.

A. And it covered what I desired in a bill. Now, whether that was prepared by Mr. Lee I am unable to say. Then I spoke to Senator Booth about this bill; I spoke to Mr. Miller about this bill, I spoke to several others about this bill, and as my name was so much a subject of comment in the legislature, I said to Mr. Madge, the deputy insurance commissioner, "I wish you would consult Mr. Miller frequently about that bill, watch its passage, assist in its passage, and give Mr. Miller all the aid you possibly can"; and the bill passed and became a law of the state. I was as active as possible in its passage.

BY MR. ISRAEL: Now, with the permission of the court to reserve

any matter that I may have, under this array of matters, omitted unintentionally, to go into it on re-direct examination, with the same permission as to the re-cross-examination upon the matter, I will turn this witness over for cross-examination. I may have omitted something.

BY MR. LEE: Counsel has very kindly agreed that in cross-examination we can divide the time with matters we are particularly familiar with.

BY MR. ISRAEL: That is my understanding with counsel, that the division applied to this: That as to matters connected with the grand jury charge in Spokane, Mr. Manager Edge would take care of that, and other articles Mr. Lee would take care of. I would not care to divide it more than that.

BY MR. LEE: That is all right.

*Cross-Examination—*

BY MR. MANAGER EDGE: Q. Mr. Schively, you have been in the insurance department of the state since 1901?

A. Yes, sir.

Q. Prior to that time did you ever have any experience as an insurance man?

A. No, sir.

Q. Then, outside of the different political positions you held prior to that time, as testified by you on direct examination, what was your general business?

A. I was a newspaper man.

Q. All of the time?

A. No, sir.

Q. What has been your general business for the last several years prior to the time you became an officer of this state?

A. I was in the newspaper business until 1895. In 1895 I became the organizer and grand lecturer of the insurance order of the Ancient Order of United Workmen. I understand your question covered general insurance. I had had that experience in fraternal. I was organizer and grand lecturer of the Ancient Order of United Workmen the latter part of 1895, and in 1896 or until—whether it is until 1897 or not I do not know—I then became the secretary of the Chamber of Commerce at Seattle.

Q. Where did you live prior to the time you became deputy insurance commissioner?

A. In Seattle.

Q. How long have you lived in the State of Washington?

A. I came here, I think, in August or September of 1890.

Q. Been here ever since?

A. Yes, sir.

Q. Outside of the experience with the Ancient Order of United Workmen, your work had not been in insurance lines?

A. No, sir.

Q. You spent some time in some foreign countries as missionary or delegate or something of that kind, have you not?

A. Yes, sir.

Q. Where was that?

A. I was in South America as a school teacher and in India in charge of the printing office of the Methodist-Episcopal church and taught history in the Lucknow college.

Q. When did you first meet Mr. Ward, getting down more particularly to the matter before the Senate?

A. I do not remember.

By Mr. ISRAEL: Mr. Schively, I do not hear you, standing here—so I don't suppose the senators hear you.

A. The question was when I first met Mr. Ward. My memory is I first met Mr. Ward when the effort was made to pass the bill controlling the organization and operation of mutual live stock insurance companies at the legislature of 1905.

Q. Were you very familiar with the life of the Pacific Live Stock Association from its beginning?

A. Quite familiar.

Q. You knew all of its officers, or most of them, did you not?

A. Most of them.

Q. Understood its method of doing business?

A. Largely.

Q. Understood the manner in which its officials were paid?

A. No, sir.

Q. Didn't know anything at all about that?

A. I knew that the officials of the Live Stock Association were getting paid on a commission basis on the income of the association.

Q. Well then, you did know in what manner they were receiving their compensation?

A. Yes, sir. I did not grasp your question at first. I answered too rapidly.

Q. You had been over to Spokane on insurance business from the time it commenced in 1904, or the early part of 1905?

A. In 1905, I think, it was organized. I was there shortly after.

Q. You have made several examinations of this company, have you not?

A. From what time?

Q. From, say, to the beginning of 1906?

A. I do not remember when the first examination was made.

Q. Do you know how many examinations you did make all told for this company?

A. I do not.

Q. Can you approximate?

A. I cannot.

Q. Do you know whether you made one?

A. I do.

Q. Do you know whether you made twenty or not?

A. I am sure that I did not make twenty.

Q. Did you make ten?

A. I am sure I did not make ten.

Q. Well, tell as near as you can, Mr. Schively, how many you did make?

A. I am under the impression that the department made three or four—certainly not over five—examinations of the Pacific Live Stock Association.

Q. Can you fix with any degree of certainty when those examinations were made, or at whose request—by whose request they were made.

A. Not the times, but every time at the request of the association itself.

Q. Those examinations were made?

A. Yes, sir.

Q. By whom were they conducted?

A. By Mr. Nichols and myself.

Q. Did Mr. Nichols ever conduct any of them himself alone?

A. Mr. Nichols and myself conducted the first examination of the company.

Q. When was that made?

A. I do not remember. The records are in the keeping of the grand jury.

Q. And after that you made all the examinations yourself?

A. No, sir.

Q. Who did?

A. There was one occasion, I think, that examination was made to complete audit by Ellis LeMaster. Whether that was at the request of the department or not I do not remember, but the department received the examination.

Q. And you understood their methods of bookkeeping, did you not?

A. Generally so.

Q. You had read over their policies?

A. Yes, sir.

Q. Did you examine their ledger?

A. Not thoroughly.

Q. Did you, at all?

A. In the first examination, conducted by Mr. Nichols and myself, my memory is that we went into the books quite thoroughly.

Q. After that, did you?

A. After that the examination was not so thorough.

Q. Did you examine the ledger after that?

A. I don't remember how complete the examination was after that.

Q. You won't say, then, that you ever looked in the ledger after the first examination?

A. I don't remember having—

Q. You won't say whether you did or not?

A. No, sir.

Q. In order to ascertain the financial standing of the company—how did you ascertain its financial standing, if you did not consult the ledger?

A. By taking an audit of some auditor, if it had been made and he had the confidence of the department.

Q. Well, supposing that you did not have any audit made by some expert accountant, how would you find out?

A. If the company had established its reputation with the department, sometimes the statement of the company would be taken—merely the results verified.

Q. And you would charge them on the reputation of the company?

A. That is a possibility.

Q. You probably did that at all times after the first examination?

A. The examination of Mr. LeMaster was very complete and thorough.

Q. When was that made?

A. I could not say, in the absence of my records.

Q. Did you examine it along before the company went into insolvency?

A. Some time before that—at least six months.

- Q. Who paid LeMaster?  
A. I did not—the association.
- Q. You did not?  
A. Whether it came through the hands of the department or not, I don't remember.
- Q. Well, you did not pay him; that is a fact, isn't it?  
A. The association paid the money.
- Q. The state did not nor the insurance department?  
A. The state certainly did not.
- Q. Well, did the insurance department?  
A. I do not remember; I think not.
- Q. Well, you remember whether you paid these accounts, fees, or not, do you, Mr. Schively?  
A. I never gave them my check or the check of the department or the check of the state, if that is your question.
- Q. That is what I want to know. Do you remember meeting Mr. Ward in Portland?  
A. I know that once in my life, at least, I have met Mr. Ward in Portland.
- Q. Do you remember when that meeting took place?  
A. I do not.
- Q. Have you any idea when it took place?  
A. I do not remember when that took place.
- Q. Can you tell approximately how long before you became a member of the company it took place?  
A. I think that I met Mr. Ward in the early part of the same year, either in going to or from San Francisco. I place it at that period.
- Q. Who was going to or from San Francisco?  
A. Mr. Nichols and myself.
- Q. Was Mr. Ward down there for his health?  
A. I think that it was on one of those occasions that I met Mr. Ward in Portland. In what year, I do not remember.
- Q. You don't recall that it was in the early part of the year 1906, a few months prior to the time you became a member of the company?  
A. I think it must have been, because I did not know Mr. Ward in 1905.
- Q. Did you ever meet Mr. Ward in Portland?  
A. I did.
- Q. By arrangement, by prearrangement with him?  
A. Not to my knowledge. Mr. Ward had written to me to meet him there, but whether I met him there in response to his letter or not, I do not remember.
- Q. Well, he wrote you to meet him there and the fact is you did meet him there shortly afterwards; is that not true?  
A. I met him in Portland. Whether it was shortly afterwards or not I do not remember.
- Q. What was the extent of your business dealings with Mr. Ward in Portland?  
A. I do not remember to have had any business dealings with Mr. Ward in Portland, other than we may have naturally consulted with each other as to the affairs of the Pacific Live Stock Association.
- Q. You had no business whatever, then, with Mr. Ward in Portland excepting that in reference to the Pacific Live Stock Association?  
A. Not that I remember.

BY MR. ISRAEL: The witness used the word "consulting."

Q. And you remember positively that no other business was transacted there at that time?

A. I do not.

Q. Would it refresh your memory, Mr. Schively, if the fact that at that time they put up some bail money for you down there was called to your attention; would that lead you to believe that you did have some other business there with them?

A. I can absolutely prove that Mr. Ward never put up a cent of bail money for me.

Q. Who did?

A. Nobody.

Q. No one?

A. No one. Now you are talking of any one outside of myself.

Q. Well, you said that no one did?

A. Well I am not including myself, you know.

Q. Well, you did put it up for yourself, you mean; is that it?

A. I did.

Q. And Mr. and Mrs. Ward had nothing to do with it?

A. Nothing whatever.

Q. You had some conversation with him there in reference to your prospective connection with the Pacific Live Stock Company, did you not?

A. I imagine so. I don't know what I should meet Ward for, if I did not.

Q. Well, I am asking you the direct question if you did or did not. I am not asking you what you might have met him for, Mr. Schively. I am asking if you did or did not?

[Last preceding question read.]

A. I did not.

Q. What was the first subject discussed when you met him?

A. I do not remember.

Q. You were not to meet him there in reference to the Pacific Live Stock Company, then?

A. I did not go to Portland to meet Mr. Ward. I met Mr. Ward in Portland.

Q. How did you happen to meet him?

A. By accident.

Q. Where?

A. Whether it was at the time he wrote me or not I do not know. I was not there especially to meet Mr. Ward.

Q. Where did you meet him?

A. In Portland.

Q. What place?

A. I do not know, one of the hotels; which one I cannot say.

Q. Was it the hotel you were stopping at?

A. I do not remember.

Q. Was it the hotel he was stopping at?

A. I do not remember. I met him at some hotel.

Q. What hotel did you stop at at that time?

A. I cannot now say.

Q. Do you know what one he did?

A. I do not know.

Q. In fact, you don't remember or have a very distinct recollection of what occurred down there in Portland, have you, Mr. Schively?

A. I have a perfect recollection of what occurred at Portland.

Q. And yet you don't remember where you stopped?

A. I was in the habit of stopping at one of two hotels, the Imperial or the Perkins. I stopped at one of those hotels. I do not think that the Oregon was erected. Since the Oregon was erected, I have stopped there.

Q. Well, just confine yourself, Mr. Schively, as near as possible to the question I have asked you. You don't know where you did stop; that is a fact?

A. It was one of those hotels, the Imperial or the Perkins.

Q. How long did you stop in Portland at that time?

A. Not over a day or so. I was waiting for Mr. Nichols to join me from Olympia to go to California.

Q. You had gone down in advance?

A. Yes, sir.

Q. For what purpose?

A. I think to examine some company.

Q. What company?

A. I do not remember, but the records of the department will show.

Q. Well, you don't know why you went there in advance of Mr. Nichols?

A. I am quite sure that I went to examine some company.

Q. Do you mean to say, then, that the records of the department will show that at the time you went there in advance of Mr. Nichols you did make the examination of some company?

A. I would not swear positively to that, but I am under that impression.

Q. Well, you won't state as a fact that you did or did not examine any company before Mr. Nichols came down there?

A. I will state it positively as to the best of my knowledge, but I am not prepared to swear to that fact.

Q. And you don't know whether the records of the department will show it or not?

A. I am quite sure the records of the department will show, but I am not certain as to that.

Q. But you are not willing to be bound by the records of the department in case they are produced here?

A. I am absolutely willing to be bound by the records of the department, if they are complete.

Q. And if they show that you made no examination there at that time, you are willing to state that you did not; is that it?

A. I am not willing to make that statement. I may have made an examination of a company and not submitted any report of an examination.

Q. You sometimes did that, did you?

A. That has sometimes been done.

Q. That you have made examinations and have no records entered in the office about the matter?

A. I am not prepared to say positively. That is a possibility.

Q. And that might have occurred down there at that time?

A. It might as a possibility, but I don't think it would.



Q. Was it the last spring before you left Portland that you had the conversation with Mr. Ward, or the first, when you met him?

A. I do not remember. Mr. Ward was a simple incident in my being there.

Q. And was not prearranged by you?

A. Not to the best of my knowledge.

Q. Was there anything said at that time in reference to Mr. Ward leaving the company?

A. I do not remember the items of conversation with Mr. Ward. I simply conclude that we must have talked about the association.

Q. Well, I am not asking for your conclusions. I am asking you if you remember what was said or done?

A. I do not.

Q. You don't know whether that question was discussed?

A. I do not.

Q. Do you know whether or not the question as to your becoming connected with the association was discussed?

A. I am positive it was not.

Q. Do you know whether or not the question of Mr. Ward's leaving the company was discussed?

A. I don't remember as to that. I only know that Mr. Ward was very much dissatisfied.

Q. You did not make any statement there to him at that time that you would like to become a member of the company?

A. I am satisfied, to the best of my knowledge, that the thought never entered my mind, or had not entered my mind at that time.

Q. You had received some correspondence from Ward at different times in reference to the affairs of the company, had you not?

A. I had.

Q. You knew Mr. Schrock quite well, did you not?

A. I think by that time I had met Mr. Schrock. I am not certain in that.

Q. You knew that while he was a well-meaning gentleman, he did not possess the educative or executive ability necessary to be manager of that company, did you?

A. I realized that Mr. Schrock was a poor man.

Q. You did not question his honesty at any time, did you?

A. I have never questioned his honesty.

Q. You have never questioned the honesty of Mr. Schrock?

A. I had not at that time questioned the honesty of Mr. Schrock.

Q. And if it was not for the conflict in your testimony and his, you would not yet question it, would you?

A. I would not yet question it. I think I am safe in stating that.

Q. That is the only thing that has led you to believe that he has not been at all times honest and square?

A. I am not yet testifying that I believe Mr. Schrock is not honest and square. Now, will you read me these questions again?

BY MR. MANAGER EDGE: Oh, I object, if the court please.

A. I want to fully answer the question.

BY THE PRESIDING OFFICER: What particular question do you want?

BY MR. MANAGER MEIGS: We want to stand by the record here.

BY MR. MANAGER EDGE: If the court please, on re-direct examination the witness will have a chance to make any changes as to discrepancy

he wants to, and I don't think he has any right to use my time in the matter.

BY THE PRESIDING OFFICER: If he wants any particular question, he may have it read.

BY MR. ISRAEL: If you want the last question, you may have it read.

A. I want the last question. [*Last question and answer read.*] I wish to answer that question by saying, so far as I now remember.

Q. As now remember what?

A. The circumstances included in your question.

Q. When was the next time you talked with Mr. Ward in reference to his leaving or your becoming a member of the company.

A. I do not remember that.

Q. Did you have frequent conversations with him upon that subject?

A. I had frequent conversations with the officers of the company—Mr. Ward included.

Q. Do you know whether or not any of the reasons for dissatisfaction on the part of Ward was the fact that the millage was a little excessive that they had been voting to themselves?

A. I do not remember that circumstance.

Q. The fight was all over the stenographer then in the office, was it?

A. No, sir.

Q. What was it?

A. That was at the beginning of the fight, so far as I remembered. I do not know what it was about—various things.

Q. Although you had talked with him very frequently about the matter, you did not know what the trouble was about?

A. Except that it was in the early stages of the company.

Q. You knew that Ward had nothing personally against Mr. Schrock, did you?

A. I do not know as to that.

Q. You don't know whether he did or did not?

A. I don't know anything about that.

Q. You don't know whether they were good or bad friends?

A. I do not know as to that.

Q. Although you had talked with Ward very frequently about the condition of the company?

A. I know they were very much opposed to each other as trustees of this association.

Q. But whether or not it was a business or a personal matter, will you testify now?

A. I will not.

Q. You do not know?

A. I do not know.

Q. Now, you have stated in your direct examination that the first time you ever got down to business on this proposition was when you had a conversation with Schrock in Charlie Murray's office in the Great Northern building in Spokane. Is that a fact?

A. That was the first time my name was mentioned as a possible employee or trustee.

Q. And you testified that at that time the deal was closed whereby you became manager of the company?

A. I did not so testify, according to my memory.

Q. You did not?

A. According to my memory.

Q. What did you testify to?

A. I testified that the proposition was then tentatively made and fully completed on the morning of the 10th of July.

Q. Then you say now that you did not testify that at that meeting in Charlie Murray's office in June the deal was concluded whereby you were to become manager of the company?

A. I did not so testify, according to my belief—my memory. I testified that it was practically settled there and that I was to go from that meeting to Olympia and consult with my wife and Mr. Nichols on the subject.

Q. The proposition had been flatly made to you, and you were considering it?

A. Yes, sir.

Q. You got some money from the company at that time, didn't you?

A. In the middle of June?

Q. Some time—yes?

A. Yes, sir.

Q. What was that money paid for?

A. That money was paid me for services which I rendered to the company, to the best of my knowledge and belief.

Q. What kind of services?

A. Services along the line of finding out who would be the one to succeed or what arrangements could be made. It was either that or an examination. I am satisfied it was the latter.

Q. You are satisfied it was the latter?

A. According to my memory.

Q. How much did you get?

A. \$200.00.

Q. Any more?

A. Whether I received more on this day or not I do not now remember. I received on a visit to Portland—I mean to Spokane—within that time or the next visit, the sum of \$77.50 to pay for a three-thousand-mile ticket and \$74.00 and some odd cents for traveling and other expenses.

Q. Had your deal been concluded with the company at the time you received the check for \$74.25 or the \$77.50?

A. It had not been.

Q. What was that money paid you for?

A. That money was paid to me as expenses, with the understanding that if the deal was consummated and I became the manager, then it would be charged to my account as an employee of the Pacific Live Stock Association.

Q. Who was that understanding with?

A. And if not, it would be charged against the association as insurance fees.

Q. Who was that understanding with?

A. I am quite positive with Mr. Schrock.

Q. Where?

A. Somewhere in Spokane.

Q. Do you know where it was?

A. I imagine in the office of the association.

Q. Do you know when it was?

A. I don't remember when it was.

Q. Do you remember who was present at the time you had the understanding with him?

A. Mr. Shrock was present; whether any one else or not I do not remember.

Q. And if this deal fell through, then you were to have that as expense money?

A. Yes, sir.

Q. That \$200.00 that you had gotten and the two items of \$77.50 and \$74.25, making a total of \$351.75, that you were to get simply for your negotiations leading up to the selection of manager; that is what you mean to say?

A. I mean to say that this \$200.00 was paid to me either for an examination of the company or for services rendered to the company. My best memory is that it was paid to me for services rendered to the company; that the \$74.00 and some odd cents and the \$77.50 were paid to me some time within the limit; I cannot swear as to the exact dates. The \$74.00 and some odd cents for general expenses; the \$77.50 absolutely for the three-thousand-mile ticket and the berth, and if the deal was consummated and I was taken in as manager, I would then charge that against myself.

BY THE PRESIDENT: Mr. Edge, if you are through with that question, it is time to adjourn.

BY MR. ISRAEL: If the court please, pardon me a moment before we adjourn. I would like, your honor, for the Senate to grant me a subpoena for H. A. Raser, of Seattle, at present agent of the Title Guaranty & Security Company; also a subpoena *duces tecum* for Mr. Raser, who was the agent in 1906; and also a subpoena *duces tecum* for the present general agent, to come and bring records of his agency, records for 1906, of the office. The situation is this: Mr. Raser was the general agent for the Title Guaranty & Security Company, or Trust Company, of Spokane, in 1906, but he is no longer the agent, although he transacted the company's business in 1906. He is no longer general agent, but has been succeeded by another general agent. Now I want a subpoena for that other general agent, whose name I will furnish the clerk, to bring with him the records that Mr. Raser had in 1906, when he was agent. I would like to have a subpoena for those two persons.

BY MR. MANAGER EDGE: If the court please, I suggest if counsel wants witnesses, that he make his application some time when the court is not in session.

BY MR. ISRAEL The court had adjourned just before I made the application. He was going to drop his gavel at 12 o'clock.

BY MR. MANAGER EDGE: Just a minute. This is taking up the time of the court while he dictates long statements for subpoenas *duces tecum*, and I believe that counsel knows that it is not the proper way. He should prepare his subpoena and hand it up to the president of the court and have it signed and subpoena issued. We don't care for you to state what they will testify to.

BY MR. ISRAEL: I am not stating what they will testify to, though. You have to imagine that.

BY THE PRESIDENT: The subpoenas will be granted. Before ad-

journment I want to announce that any witnesses to appear before the court should report immediately to the secretary as soon as they arrive in Olympia, if they expect to draw the per diem. The court will take a recess until 1:30.

At 12:00 noon the Senate, sitting as a court of impeachment, took a recess until 1:30.

### AFTERNOON SESSION.

The Senate, sitting as a court of impeachment, reconvened at 1:30.

[*Mr. Schively on the stand.*]

BY MR. MANAGER EDGE: Q. We were discussing just previous to adjournment the checks that you received in June from the company, consisting of a check for \$200, one for \$74.25 and one for \$77.50. Those checks, I understand, were given to you with the understanding that if you accepted the position of manager they were to be charged to your account, and if the proposition of becoming manager fell through with you were to have those for your services leading up to the confirmation of that deal; is that correct, Mr. Schively?

A. Well, Mr. Edge, before I proceed with my testimony, I desire to make an explanation. Since the adjournment of the court this morning my counsel advises me that the record made me say that I have never up to the present time questioned the honesty of Mr. Schrock.

Q. Well, that has been passed, Mr. Schively.

BY MR. ISRAEL: Now, if the court please, the witness is entitled to make his explanation.

BY THE PRESIDING OFFICER: The witness may make his explanation.

A. I am— I understand your question to comprehend the time in which I had business relations with Mr. Schrock. I had never any idea as to what Mr. Schrock's testimony was before the grand jury until I heard his testimony before this Senate, and when I heard Mr. Schrock's testimony here and realized that that was the testimony he gave before the grand jury, I then for the first time in all of my knowledge of Mr. Schrock knew that he was dishonest and that the books had been doctored.

BY MR. MANAGER EDGE: Q. You have learned that during the adjournment at noon, is that it?

A. No, sir, I have learned since the adjournment at noon as to what the record caused me to say, and the record does not represent what I intended to say.

Q. In other words, you mean you have not been able to make yourself understood, is that it?

A. I understood the question to be as to my dealings and relationship with Mr. Schrock during the time of my business dealings with him. I did not include anything further than that I had confidence in Mr. Schrock until I heard his testimony before this Senate.

Q. And the only thing that has lead you to believe that he was dishonest, if at all, is what he stated here to this Senate under oath?

A. What he stated before this Senate.

Q. Outside of that he was always square and fair and above board in his business transactions with you?

A. I had always so estimated.

By MR. MANAGER EDGE: Mr. Reporter, you may repeat the first question.

*[Question repeated.]*

A. My understanding was that those two amounts were to be charged to me personally if the deal was consummated, if I became manager; that if, for any reason, it failed or fell through, I would not have to return that money to the Pacific Live Stock Association; it would be charged to services for traveling expenses in going over there to give my good offices to the company.

Q. As I understood your testimony on direct examination, you did not get the \$77.00 and \$74.00 until you had been over to Olympia and came back, is that correct?

A. I did not so state. I stated that I don't remember when that money was paid to me. It was paid some time between my meeting with Mr. Schrock and Mr. Murray—in Mr. Murray's office, and the 10th of July—just when, I don't know.

Q. Do you remember receiving a check for \$200 about that time?

A. In the middle of June?

Q. Yes?

A. Yes.

Q. What was that for?

A. That was for either an examination, if an examination was made at that time, or for services that I had performed for the company in giving advice along that line.

Q. The \$77.50 check along the line of that?

A. No; along the line of securing better management for the Pacific Live Stock Association.

Q. Had you been in the habit of charging companies fees like that for giving advice?

A. The Pacific Live Stock Association?

Q. Yes, that is what we are talking about?

A. The usual fee paid me for going to Spokane by the Pacific Live Stock Association was \$200, whether it was an examination or whether they sent for me to advise them and aid them in any respect whatever.

Q. They had sent for you before and gotten advice at the rate of \$200 per, had they?

A. I couldn't say about that. I was going to and fro between these two cities in my efforts to straighten out the tangle between the trustees.

Q. That was before you had anything to do with the company?

A. As a manager?

Q. Well, no; we were talking about this \$200 check; now that was before you had anything to do with the company?

A. Couldn't have been, because I had intercourse with the company from the start.

Q. Well, this check is dated the 13th of June.

A. Well, the 13th of June—I received that check about that time from the Pacific Live Stock Association.

Q. And you won't swear or testify as to what it is for?

A. I will not. I have no means of refreshing my memory.

Q. It went to you personally, did it not?

A. The grand jury has taken my records and I have no way of refreshing my memory.

Q. This check went to you personally, did it not?

A. As to that, I don't know until I see the check.

Q. Are you in the habit of receiving fees of that size and not remembering what they are for? You don't very often get a fee of \$200 in your business, do you?

A. In the insurance department?

Q. Personally, for your advice?

A. I am receiving checks all the way from \$2.00 to \$10,000.00; sometimes to J. H. Schively; sometimes to J. H. Schively, deputy insurance commissioner; sometimes to J. H. Schively, secretary of state, and in various ways.

Q. You don't very often get these checks for advice, do you?

A. I have frequently.

Q. You quite frequently get checks as insurance commissioner, for advice, do you?

A. Not as insurance commissioner; I say as deputy.

Q. Are you in the habit of receiving checks for advice given?

A. I have received checks in the past for advice given.

Q. That had nothing to do with the department in any way?

A. That had nothing to do with the department in any way.

Q. And you think this check for \$200 was given for advice—was given to you by the Live Stock Company?

A. I think so. It may possibly have been given for an examination at that time.

Q. And if you were to become a member of this company, this was to be charged against your account?

A. No, sir; it was not.

Q. Did you give any receipt for this check?

A. I don't know as to that. I imagine that the company would ask for a receipt when it gave out checks.

Q. If you did examine this company at that time, did you make an examination of its books for this check?

A. If I examined the company at that time, I did.

Q. Did your record show what this check was for?

A. I have no knowledge as to what my records show, because they were taken from me by the grand jury and have not been returned.

Q. Well, now you have gone over that a dozen times with emphasis. Now, if you will tell the Senate what that check is for, that will end the matter.

By MR. ISRAEL: Now, if the court please, if Mr. Edge has the records that were taken from this witness by Mr. Donovan, I would like to have them.

By THE PRESIDING OFFICER: I think counsel may take his own means as to examining the witness.

By MR. MANAGER EDGE: Q. You will not testify, then, as to what this check was for?

A. I will not swear as to whether it was for examination or for services rendered, but I am fully of the impression—without being able to consult my records, I am fully of the impression that that check was given to me by Mr. Ward and Mr. Schrock for services that I had given to them in advising them and helping them and counseling them in the straightening out of this tangle between them.

Q. Then you will testify that you had received money from that company before you became manager for advice given them and not for the purpose of examination?

A. I had received it for both purposes.

Q. Well, now, confine yourself to that question. Will you testify that you did or did not receive money from that company for advice simply and not for any other purpose?

A. I am firmly of the impression that I did.

Q. You have?

A. I have.

Q. And this check was paid you for advice?

A. I am not positive as to what that check covered.

Q. Will your records show in the office whether or not an examination was made at the time this check was issued on June 13th?

A. I have no records; they are in the hands of the grand jury.

Q. If you had them, will they show it?

A. They would be apt to.

Q. You won't state whether they will or not?

A. I will not; I have not had control of my records since the investigation began.

Q. As a matter of fact, you don't keep any record of the investigations you conduct?

A. I do.

Q. Of all the examinations you conduct of any company?

A. Of nearly all of them. There are conditions in which the report of it is waived.

Q. Who waives it?

A. I do, because it is not the completion of the examination.

Q. Well, the completion is generally made by the time you get the check for it, isn't it?

A. Not always.

Q. You sometimes get the check before the examination is made?

A. Yes, before the examination is completed.

Q. Before the service is rendered?

A. No, sir.

Q. Well, you stated you got the check before the examination is completed. Now you state that you don't get it until after the service is rendered.

A. I do not so state. I said that if an examination is made but not completed, and there is going to be a subsequent examination the full price of the examination may not always be charged. The costs or expense may be charged as in the case referred to this morning.

Q. Do you remember whether you kept any of that money, or whether you turned it over to the state, or what became of it?

A. I know that this money was not turned over to the state. I know that that is my name on the back of that check.

Q. And you kept the money?

A. I kept the money.

Q. And you don't know whether it was for examination or advice?

A. I reported that money—when I say I kept the money—I reported that money to Mr. Nichols. Whenever I got money, whether it was for advice or counsel, or part examination, I always reported my income.

Q. Confine it to this check, Mr. Schively; you have no distinct



recollection as to this check, whether you cashed it and divided this or kept it yourself?

A. No distinct recollection as to that check.

Q. If this was for advice, you kept it all yourself?

A. No, sir.

Q. Well, it was a personal fee of your own, wasn't it?

A. It makes no difference; I reported all moneys received to Mr. Nichols.

Q. You were not working under his instructions in giving advice, were you?

A. He always knew about it, where I went and when I went and for what purpose I went.

Q. You say you had a conversation in Murray's office down at the Great Northern depot. Can you fix about the time that occurred?

A. About the 15th or 13th of June, 1906.

Q. Probably about the time that you received this check on June 13th?

A. Yes.

Q. Well now, Mr. Schively, you have a pretty distinct recollection of that trip to Spokane that time, don't you—you being in Murray's office there?

A. Yes.

Q. You testified in detail as to what happened there?

A. Yes.

Q. Don't you remember whether or not on that trip, when you must have gotten this check on the 13th, if you made an examination of that company?

A. I don't remember. The company was examined a number of times, two or three times by myself; it was examined once by Mr. Le-Master; I went over his report.

Q. I want you to confine yourself—you understand the question, Mr. Schively?

A. I do thoroughly.

Q. You will not state whether on that trip when you had this conversation with Murray and Schrock in Murray's office, that you made an examination of it by which you got this check?

A. I would not swear, but my impression is, my firm belief is, that I received it for services performed. It is possible at that time that I made an examination, but I don't remember having done so. It is possible I did.

Q. You will not swear for what purpose you got this check?

A. I will not swear absolutely as to that, but my impression is I received it for services performed, but it is possible I may have examined the company.

Q. In other words, you may be right either way, no matter what the facts would ultimately show?

A. I stand by the facts; yes.

Q. Who was present at that conversation in Murray's office?

A. Mr. Murray and Mr. Schrock and another gentleman, I think. My impression is that it was Mr. Copeland; I am not certain as to that part.

Q. And I understood you to testify in your direct examination that at that time the salary was fixed that you were to receive when you became manager. Is that true or not?

A. The salary was not fixed, because the deal was not consummated, but Mr. Murray said as I have already testified.

Q. What?

A. Mr. Murray—I had been outlining the kind of man that they ought to have, and Mr. Murray said words to this effect to Mr. Schrock: “If you could induce Mr. Schively to accept the position, it would be a happy consummation of it.”

Q. Now, we want to get along as rapidly as possible, Mr. Schively. Was there anything said there about four hundred dollars a month?

A. At that interview I am firmly of the belief that Mr. Schrock said we will give you anything you desire, and I asked how much they were receiving, and I think his reply was six hundred dollars, and my reply to that was to the effect that if they were receiving that I ought to be worth at least four hundred.

Q. And Mr. Schrock said that would be satisfactory?

A. Mr. Schrock indicated that would be satisfactory.

Q. Do you mean to say he said that would be satisfactory or not?

A. Well, I can't quote Mr. Schrock's exact words, but that was the idea that was left in my mind, that he did.

Q. And you stated that that would be satisfactory, and that you would come back to Olympia and consult your friends and Mr. Nichols as to whether or not you would take them up on the proposition?

A. Yes.

Q. And you so stated there. That conversation took place about the 15th of June?

A. About the middle of June.

Q. It was before you went back on the 21st or 22d?

A. Certainly before.

Q. At the time—had you gotten any money from the company to pay your expenses on account of salary at that time?

A. At what time?

Q. At the time you had the talk in Murray's office. Did you get any cash advance from the company then?

A. My impression is that the money I received on that trip at that time was this \$200.

Q. And you used that as an advance to pay your expenses during that trip?

A. No, sir; I used that as my own personal money. That was nothing to be accounted for again to the association, and it was not state money in any sense of the term—no state fee—it was not to be accounted for to the state. It was to be accounted for only to Mr. Nichols and myself, that \$200.

Q. Did you see Ward about that time?

A. I don't remember.

Q. Did you talk with him about becoming the manager at four hundred dollars a month during either of those trips?

A. I always saw Mr. Ward when he was there. I imagine I must have seen Mr. Ward about that time, because his name is on that check.

Q. Well, Ward was president of the company at that time?

A. Yes.

Q. If you were going to be employed as manager, don't you think it would be natural for you to consult the president?

A. It would seem so. All my talks along that line were more with Mr. Schrock than Mr. Ward.

Q. You won't state whether you had any talk with Ward at that time or not?

A. I would not say positive either way, but his name on the note would indicate that I had seen Mr. Ward.

Q. Now, you returned on the 23d and had made up your mind to accept the position?

A. On the 23d?

Q. About the 23d?

A. I don't remember as to dates, Mr. Edge. I don't remember whether I went to Spokane again and returned and then went again on the 10th. The dates on the check ought to show this. I do remember what I have testified here, that those two amounts were hanging in the balance and dependent on my finally becoming or not becoming a member of the association. They were charged in my note book finally when I came to settle with them—in my note book as a charge against myself.

Q. When did you first talk with Mr. Ward about taking the position as manager?

A. Certainly not until after my meeting with Mr. Schrock and Mr. Murray in the middle of June.

Q. How did you happen to get two checks for about the same amount—\$74, approximately, and \$77—at the same time?

A. As I remember, one was to pay traveling expenses, and the other was to purchase a three-thousand-mile mileage book from the railroad.

Q. Well, were you to get a flat salary of \$400 a month or \$400 and expenses?

A. I was to get \$400 and pay my own expenses.

Q. Do you remember having talked with Mr. Ward before the meeting, on the evening of July 10th, about your becoming manager?

A. I don't remember to have had that conversation, but I imagine I talked with Mr. Ward about the question.

Q. Well, now, Mr. Schively, I don't care to know what you imagine, but would like your testimony as to what the facts were—not what you must have done or should have done, but what you actually did do.

A. The evening before the 10th of July, I was practically employed as business manager of the Pacific Live Stock Association. On the morning of the 10th they gave me a check of \$200 as advance salary as manager of the Pacific Live Stock Association. Mr. Ward and Mr. Schrock gave me that check.

Q. On the morning of the 10th?

A. On the morning of the 10th.

Q. Were you at the meeting that evening?

A. I don't remember. I couldn't have been there very long.

Q. Well, testify as nearly as you can recollect. How long you were there?

A. So far as I remember, I was not over half an hour or an hour. I am not certain as to the length of time I was at that meeting.

Q. What time did the meeting adjourn?

A. I don't remember.

Q. How did you know there was going to be a meeting of the board of trustees?

A. I had arranged with them to have the meeting.

Q. You had arranged first that they should have a meeting in the afternoon, did you not, Mr. Schively?

A. That was the time; the evening meeting was the continued session of the meeting that I had arranged between Mr. Ward and Mr. Schrock.

Q. Well, it was a trustees' meeting you had arranged for in the afternoon?

A. I hadn't arranged for the trustees' meeting. I had arranged for

the meeting in the afternoon between Mr. Schrock and Mr. Ward, out of which the meeting arose—the trustees' meeting.

Q. Did you attend the meeting in the afternoon between them?

A. Not that I remember. I remember they came together and had a meeting between themselves.

Q. Well, you had arranged to have a meeting in the afternoon of the 10th to talk this thing over between Mr. Ward and Mr. Schrock; you had arranged that meeting?

A. Yes, sir.

Q. You were not present at that meeting?

A. After bringing them together, I was not present at their business talk.

Q. You had agreed beforehand to be present at the meeting and was not there?

A. No, sir; not according to my memory.

Q. As a matter of fact, you had been celebrating pretty freely, hadn't you, Mr. Schively?

A. Not at that time. It was after Mr. Ward and Mr. Schrock came together to complete their arrangements that I was liberated—while they were having their trustees' meeting I was liberated.

Q. What time was that you were liberated, after Mr. Ward and Mr. Schrock came together?

A. After Mr. Ward and Mr. Schrock came together; I imagine it was in the early afternoon.

Q. What hour, if you can fix it?

A. I don't remember the hour.

Q. Well, you hadn't then arranged to have any meeting in the afternoon?

A. What sort of meeting?

Q. Trustees; or meeting of the trustees?

A. I had not; I was not a trustee and couldn't arrange to have that meeting.

Q. There wasn't any meeting arranged, then, for the afternoon?

A. Well, what sort of meeting? I arranged a meeting between Mr. Ward and Schrock.

Q. Did you know that meeting was going to be called for the evening?

A. I did not. To the best of my knowledge I had no means of knowing that. I remember these two men got together and out of their conversation the meeting arose to consummate the deal which these two men made. After the consummation of the deal with Mr. Ward and Mr. Schrock they had a trustees' meeting. As I say, in the trustees' meeting there was no reason for me to be present, and I don't remember to have been present at that meeting.

Q. And you never expected to be present at the meeting of the board of directors on that evening?

A. I did not know that the meeting was to go over—in the evening—into the evening. I knew that some time before I took that train that night that there would be a report to me and I would find out what had been done at the trustees' meeting.

Q. Then there was to be a trustees' meeting to consider your relation with the company?

A. There was to be a meeting, not to consider my relations with the company so much as to conclude the deal being made between Ward and Schrock as to Ward's resigning for the \$1,200.

Q. Where did you have the talk with Mr. Ward in reference to him resigning for \$1,200?

A. Somewhere on the street, or at his hotel, or some place.

Q. Do you remember talking with him at the Halliday hotel?

A. I do not remember where it was.

Q. Do you remember if you were at the Halliday hotel that day?

A. I do not know where it was—whether it was at the Halliday hotel or at the Spokane—I was going around to different places.

Q. You have not a very distinct recollection of where you were?

A. I have up to that time.

Q. Where were you?

A. It is impossible to say positively after three years.

Q. Why did you say you have a distinct recollection?

A. I have a distinct recollection of going around the city of Spokane and meeting my friends and acquaintances; but at what hour it was, or whether it was on this corner or whether it was on that corner, or whether it was at the Halliday hotel or at the Ridpath hotel, or some other hotel, it is impossible for me to say after three years.

Q. You remembered very distinctly the conversation with Mr. Ward and Schrock that day?

A. What conversation?

Q. When you stated you brought Ward and Schrock together; you stated very clearly how you brought them together?

A. Yes.

Q. But your memory as to what happened after that is not very clear, if I understand you correctly.

A. What happened in that conversation?

Q. No, what you did after that.

A. I said I went around, leaving these men—being liberated from further activity in the matter. I then went around the city seeing friends, and saying good-bye to them for the time, telling them I was coming over to reside with them, and be a resident of the city of Spokane.

Q. Where did you take dinner that night?

A. I certainly could not tell after three years where I took dinner on a certain date, at a certain hour.

Q. Do you recall who you were with?

A. I do not.

Q. You don't know what friends you were with?

A. I could not say.

Q. You were out several hours before you saw the directors again?

A. Yes.

Q. Where were you when they found you?

A. I do not remember.

Q. Who did find you?

A. I think Copeland and Shallenberger.

Q. You don't remember that distinctly—that proposition?

A. I do not remember—

Q. You understand it meant a great deal to you at that time?

A. Yes.

Q. And yet you have no distinct recollection as to what happened—as to how you happened to go to the meeting, where your position depended on its action.

A. You have used the word “celebrate,” and I am making clear in

answer to your question and to this Senate when the celebration took place.

Q. Tell when the celebration took place and what it did consist of, if you remember.

A. In the morning I was elected manager. That was settled upon.

Q. Where were you elected?

A. Mr. Ward and Mr. Schrock gave me a check in the sum of two hundred dollars, advance paid to me as the newly-elected manager of this Pacific Live Stock Association. Now, after that, some time that day, I was talking with Mr. Ward about the subject, and Mr. Ward then broached the fact, or suggested that if he got the \$1,200 he would go out.

Q. Can you state first, where that conversation took place?

A. I cannot.

Q. Who was present?

A. I remember Mr. Ward was there. Whether Mrs. Ward was there I do not remember.

Q. You don't know where it took place?

A. I don't; and I did not take anything up to that time, to the best of my knowledge.

Q. You would not swear positively to that?

A. No, I would not swear positively to that, but I am defining the limits of your word "celebrate." Some time after the payment of that \$200 check I was talking with Mr. Ward, when he made the suggestion, and I said that I would carry the suggestion to Mr. Schrock, and I carried the suggestion to Mr. Schrock, and Mr. Schrock said, "Just the thing."

Q. What was "just the thing"?

A. That they would pay Ward the \$1,200 and buy out his interest in the Pacific Live Stock Association.

Q. When that conversation took place, where did that conversation take place, and who was present, if you remember?

A. You have asked me that once, but I will reply to it again—the question is with relation to Schrock?

Q. Yes?

A. This conversation with Schrock occurred, I am quite sure, in the office.

Q. Will you swear to that?

A. I cannot absolutely swear to that fact, but of meeting the man I am sure. I went in search of Mr. Schrock, and I naturally went to the office, but the exact spot upon which I stood when I met him—

Q. That is not the question. I want to know where it was and who was present?

A. I talked with Mr. Schrock. If there were others present in the office, I was not talking loud enough for them to hear. The conversation was with Mr. Schrock and my language was to Mr. Schrock, and so far as I know there was no one present when I made this suggestion to Schrock as coming from Mr. Ward.

Q. No one present that would contradict you in the event the matter became a subject of inquiry excepting Mr. Schrock?

A. I think that is correct.

Q. What did you do at that meeting that evening?

A. What did I do at that meeting that evening?

Q. Yes.

A. I do not remember. This meeting, now, was after this to which you referred—my going around and stating to my friends that I was coming back, and saying good-bye to them?

Q. Certainly.

A. And my recollection of that meeting is hazy. I remember being met by some of the trustees and some persons who said that they wanted to see me at the meeting of the board of trustees. I went to that meeting and was informed that the board of trustees had accepted the resignation of Mr. Ward, and that I had been elected as a trustee and as president of the association in Mr. Ward's place.

Q. You did not see any notes there?

A. To the best of my knowledge, I saw no notes. It is possible that Mr. Shallenberger or others came to me and said, "You are now the president and there are the papers—there are papers that you should sign as the president," or "papers you should sign before you go away, and you should leave your signature here for certain purposes we will need while you are away." That is possible, but I do not remember—

Q. Did you sign any papers that evening as president?

A. I would not swear positively whether I did or did not. It is a possibility, even a probability—either one.

Q. No matter which way it was, your statement would fit either circumstance?

A. I am not endeavoring to make my statements fit circumstances, but fit facts as they happened.

Q. You knew it was anticipated you were going away?

A. Certainly.

Q. You know whether you signed any policies there that night?

A. I do not know. If I signed papers there that night, I would not remember whether they were checks, policies or notes, but I do remember this: That there never was a moment when the impression was made on my mind that I had obligated myself to Mr. Ward or anybody else by the signing of a note.

Q. What papers would you have been called upon to sign at that meeting, if you can recollect—might have signed in the course of business?

A. They might have asked me for my signature from which to get a stamp—

Q. You commenced signing policies then as president?

A. I am not saying what I signed. I do not remember—

Q. Would you, in the ordinary course of business, have commenced then to sign policies?

A. Not very likely.

Q. Why not? You were president of the company?

A. I was president of the company, but the policies were coming in at the rate of fifty or a hundred or two hundred a day. I was about to take the train, and it is not reasonable to think that I would sit down to sign a number of policies. They might have wanted my signature to put on a stamp to sign the policies.

Q. Do you mean that at that meeting they intended to get a stamp for you to sign, for use on the policies?

A. I never intended any such a thing.

Q. Oh, you did not intend to sign the policies?

A. That matter never occurred to me.

Q. It never occurred to you at that time?

A. Not that I am aware of. It may have been suggested. I testified here before what I now testify, that during my absence, which was from the 10th of July, as president, until I returned, my name was put upon the policies with a stamp. Now, where they received my signature from which to get this stamp I do not remember.

Q. Had you not made arrangements with Mr. Ward, the retiring president, to use his facsimile on the business of the company for some time after he resigned?

A. I have not said so.

Q. Didn't you make an arrangement, or had not arrangements been made, with Mr. Ward at the time that he resigned, that the company was to use his facsimile on the business of the company?

A. After I was president?

Q. Yes?

A. The stamp he signed as president?

Q. The facsimile of his was to be used on the business?

A. I do not remember any such arrangement.

Q. Will you state that no such an arrangement was made with your knowledge?

A. I remember nothing whatever of such an arrangement.

Q. You testified, as I remember, that Mr. Ward got his money that night from the company. Is that correct?

A. I do not remember having so testified.

Q. What do you remember testifying to?

A. I testified that I went away from there with the knowledge that they had made a satisfactory arrangement with Mr. Ward, and I imagine that he had received his \$1,200, because that is what he asked, and he would not have resigned unless he secured it.

Q. Now, just to settle the matter: If you had signed three notes that night, would you not remember that fact at this time?

A. I say in answer to that, that I did not consciously sign three notes or four or one or two.

Q. Do you mean to say you might have done so unconsciously? You don't ordinarily unconsciously sign promissory notes for that amount of money?

A. I am signing checks every day of my life without looking at the check, without seeing to what department they go. They are brought to me and I glance at them; these are departmental things—

Q. I am not asking about departmental things. I am asking you if you might have unconsciously signed three notes of that kind and not know anything about it now?

A. Yes, possibly.

Q. And it is possible you did sign the notes that night and not know anything about it now?

A. Yes, possibly.

Q. Why did you not tell the grand jury when you were taken before them that that night you might or might not have signed those notes, not knowing, because of your intoxicated condition, or whatever your condition was, and not make the straight, definite statement that you never did?

A. I want to say, Mr. Edge, that I never had an opportunity to explain before that grand jury. During the whole time I was before that grand jury I was endeavoring to explain the circumstances—

Q. Just a minute.

BY MR. ISRAEL: Let him answer.

BY MR. MANAGER EDGE: I am asking him why; he is not answering the question.

BY MR. ISRAEL: I am making an objection for another purpose. I would like to know whether this witness Donovan is a member of the



board of managers or one of the attorneys themselves in the conduct of this examination, or is here for the purpose of seeing that—

BY MR. MANAGER EDGE: That is absolutely nothing to defendant's counsel.

BY MR. ISRAEL: He has a seat in the house, which is not an orderly place for a witness, either for the prosecution or defense, and he should not be in here.

BY THE PRESIDING OFFICER: That is a proposition that the rules do not govern. He is not interfering with the progress of the trial, and the chair has no jurisdiction in the matter.

BY MR. ISRAEL: The evidence that this witness—the fact is that this witness has started to make an explanation which may be a very vital explanation—

BY THE PRESIDING OFFICER: Proceed.

BY MR. MANAGER EDGE: I will ask the stenographer to read the question again.

BY THE PRESIDING OFFICER: Repeat the question.

BY MR. MANAGER EDGE: Q. The question was this: You have testified, Mr. Schively, that you have not a very distinct recollection as to whether you did or did not sign the notes, and have admitted that you had been celebrating?

A. Yes.

Q. Now, if that were true—what you have testified to—why did you not state to that grand jury, when they asked you if you had signed those notes, instead of answering positively that you never did, why didn't you answer that you might or might not, as you now do?

A. Who told you that I did not answer that way to the grand jury?

Q. I am asking you the question?

A. I do not know as I said that to the grand jury.

Q. Do you mean to say that you did not admit to the grand jury that you did not sign the notes?

A. I do not remember what I said to the grand jury.

Q. You don't?

A. No, sir; I remember what I wanted to say—what I tried to say and was not allowed to say.

Q. Do you mean to say that during the entire day and a half that you were before the grand jury you did not get an opportunity to tell them you were intoxicated that evening and did not know what you were doing?

A. I had not in my mind to tell them that.

Q. Is not that a fact?

A. Is not what a fact?

Q. That you did not know what you were doing on that evening, according to your own testimony now?

A. The fact is, I do not remember what I signed that night, not because I was so intoxicated as not to sign, or to know what I was signing as a full reason, but because in sitting there receiving the congratulations of these men who had just elected me, if the bookkeeper or a trustee had put something before me and requested me to sign it, saying it was in the course of the work that was to be done or had been done, without looking or paying special attention to what they put before me, I would have signed it, and it is possible I did sign it.

Q. Why did you not tell that to the grand jury, and not state positively you did not?

A. You will have to demonstrate to me first, from Mr. Pellitier's notes, that I did say that to the grand jury.

Q. You know that there is just as much wrong in testifying to something that you do not know that it is correct as to state something as so that you know is not correct. You realize that?

A. I don't get the full import of your question.

Q. Do you mean to say you did not tell the grand jury, then, that you never signed those notes? Is that what you mean to say now?

BY SENATOR RUTH: I am going to ask that Mr. Donovan either be entered as a regular attorney in this case or stop consultation with the attorneys and the board of managers.

BY THE PRESIDING OFFICER: There will be no applause or any demonstration from the galleries. If there is, the gallery will be cleared.

BY SENATOR RUTH: I have no objection if he wants to be entered as an attorney in this case, regularly.

BY THE PRESIDING OFFICER: Will you address that to the chair in the form of a motion, so that I can take formal action?

BY SENATOR RUTH: I make it in the form of a motion.

BY SENATOR WILLIAMS: I second the motion.

BY MR. MANAGER MEIGS: We would like to inquire as to whether we can include some other gentlemen in this case of expulsion.

BY MR. MANAGER EDGE: If this is going to create any disturbance, I think— I do not desire to perturb any of the senators by the presence of any one who may be objectionable, and will ask Mr. Donovan to withdraw, because he is not counsel in the case, simply a witness here in good faith, in the furtherance of justice, and if the Senate feels he is doing other than that I am perfectly willing to have him withdraw. He is an official of the state, and he is not interested in this prosecution one way or the other.

BY MR. ISRAEL: There is no reflection from counsel upon the members of the board of managers or an individual of the board of managers.

BY THE PRESIDING OFFICER: In that event, if Mr. Donovan withdraws, there is no necessity of putting the motion.

[*Mr. Donovan withdraws to the gallery.*]

BY THE PRESIDING OFFICER: The trial will proceed.

[*Question read.*]

A. I don't mean to testify before this Senate as to what I said or what I did not say before the grand jury. I had no right of explanation. I remember only this one thing: I went before the grand jury to tell them everything I knew about the transaction.

Q. Just a moment.

A. I am going to answer your question.

BY THE PRESIDING OFFICER: Let him proceed reasonably far in his answers. If he goes beyond a reasonable limit, I will stop him.

Q. When you were asked the question either before the grand jury or otherwise, whether you signed these notes—

BY MR. ISRAEL: The questions of the honorable gentleman intentionally or unintentionally are a constant trap. The question before

the Senate is not as to what he testified before the grand jury. It is whether he ever executed any notes to Mr. Ward, and that is the issue.

BY THE PRESIDING OFFICER: The line of cross-examination is entirely legitimate, and counsel is entitled to set a trap, if he desires, but I do want him to let the witness answer the question.

BY MR. MANAGER EDGE: I am trying to get this evidence, to get at the facts. I am not trying to catch anybody. This witness is skillful enough; if I should set a hundred traps for him I could not catch him.

Q. When you were asked the direct question before the grand jury as to whether or not you signed these notes, did you not state positively and unequivocally that you did not sign any notes?

A. I do not know what my testimony was. I began my testimony—

Q. Answer that question.

A. I am going to answer the question.

BY THE PRESIDING OFFICER: Let him explain.

BY MR. MANAGER EDGE: It is not an answer.

BY THE PRESIDING OFFICER: These questions cannot be answered yes or no. He is entitled to an explanation. Let him explain and it will save time.

A. I went before the grand jury with the earnest desire to tell the whole truth—

BY MR. MANAGER EDGE: I object to that.

BY THE PRESIDING OFFICER: The court will shut him off if he goes too far along that line. Now let him proceed with an explanation within reasonable limits. The court will stick to that.

A. I wanted the grand jury to know the whole truth. I was rushing into the grand jury's answers with all sorts of explanations until it broke upon me finally that I was being led into a trap, and then I began to insist upon it, and I insisted upon it all the balance of the time, that I never obligated myself to Mr. Ward, and I always got four hundred dollars, and I stuck to those two things, and not to anything else. I was like a drowning man, and I held to those two things—the four hundred dollars a month and that I had not obligated myself to Mr. Ward.

Q. You testified you did not sign any notes?

A. I do not know what I testified about signing any notes, but those were the facts, and only once was I able to break through Mr. Donovan's guard—incredible as it may seem. I still wanted the grand jury to know that I did not get that money or any other money that is against me that is not—

Q. Do you mean to say that the grand jury there refused to give you the privilege to state your version of the transaction?

A. That is what I mean to say—that is what I want these men to know. [*Witness rises from chair.*]

BY MR. MANAGER EDGE: There is no occasion for your becoming dramatic.

A. I am not trying to be intentionally dramatic.

Q. Will you say positively they did not give you an opportunity to state your version of the story?

A. Positively.

Q. You knew, Mr. Schively, what compensation Mr. Ward was receiving, did you not, at the time you became president?

A. At that time?

Q. Yes, you knew how he was getting paid?

A. I knew they were getting paid—

Q. On a millage basis?

A. At what time?

Q. At the time you became connected with the company—you knew they were being paid on a millage basis?

A. I knew they were being paid on a commission basis at the meeting in June, when this matter of my taking the position of manager was first mooted.

Q. You knew that all of the others were being paid on a millage basis?

A. I so knew—now I don't want to be confused as between millage and commission. I knew they were being paid on a commission basis; whether or not that was millage—

Q. You understand by commission basis that means so many mills on the liability written; that is, what you understand as commission?

A. In a scale, millage might be centage, or dollarage, if the term might be allowed. A commission was being paid on the amount of liability written.

Q. You know they were not on a flat salary?

A. Yes.

Q. After that meeting that night you left the city, on July 10th?

A. Yes, sir.

Q. At 10:30?

A. Yes, sir.

Q. How long did you remain away from the city?

A. From Spokane?

Q. Yes?

A. I do not remember.

Q. About how long, approximately?

A. I did not return again, I think, until some time in August.

Q. Do you remember a meeting of the directors on August 4th, when you took your oath of office?

A. I remember taking my oath of office at a meeting shortly after my return. Whether it was on the next day or after or not I cannot say.

Q. Who presided as presiding officer of that meeting?

A. I think I did.

Q. Were you there when the meeting commenced?

A. I was there when the meeting commenced.

Q. Were you there when the meeting ended?

A. I was there when the meeting ended?

Q. Were you there all during the meeting?

A. I was there all during the meeting.

Q. Were you in possession of all your faculties that evening?

A. I was.

Q. There was not much went on that you did not understand?

A. No, sir.

Q. Now, if you contend that you were on a flat salary—you say you knew that Mr. Ward was on a millage basis at the time you went in, or commission basis, and not on a salary—how do you account for this resolution that appears upon the books that evening, which

I will read to you: "*Resolved*, That it is the sense and intent of the action whereby Mr. Schively was elected to succeed Mr. Ward that Mr. Schively would have the same rights that Mr. Ward had had and equal with other trustees with respect to compensation. Moved and seconded that this resolution be unanimously adopted." Now, if you were on a flat salary all of that time, how do you account for that resolution being on the books, as shown on there, of that meeting?

A. Very easily. I have already testified that after this meeting on the 10th of July, before taking the train, I had a conversation with Mr. Schrock in which I said to Mr. Schrock, "How have you arranged?" He replied to the effect that I was to continue to get my \$400.00 a month until the association's income had paid to Mr. Ward what they had arranged to pay, and that about the first of October that would have been paid out, and then I would in all respects take Mr. Ward's place, and then I was to decide whether I would go on the millage basis with these others or not.

Q. Well, that meeting took place on August 4th, when you first came back, at which that resolution was adopted?

A. That is perfectly correct. My understanding from the first, from beginning with the first mention of it at the meeting in Mr. Murray's office, I constantly insisted upon it to Mr. Schrock, whenever the question arose at all, that I was getting \$400.00 a month, that nothing—no arrangement that they made with Mr. Ward or among themselves or anybody else—was to interfere with the fact that I was to get the straight sum of \$400.00 a month.

Q. Well, do you mean to say, then, that this resolution does not say that that is to take effect after the first of October?

A. That was the arrangement that I had when I became the president.

Q. Do you recall that resolution being passed at that meeting?

A. I do not recall this [*referring to book*] as part of that—

Q. Meeting?

A. Meeting. It is impossible for me to tell. Now, when that meeting—

Q. Well now, Mr. Schively, a resolution like that, that effected you and you presided there, it seems to me that you would certainly remember that?

A. That matter had all been gone through before. I was informed, as I have said, that I was to get this straight salary of \$400.00 a month. I was to fall heir to the completion of Mr. Ward's interest and all that he got when his—or the income of the company—had worked out whatever they had paid him. I was informed that that would occur about the first of October. These meetings— When you asked me if I had presided at this meeting and I hesitated in the answer, I suppose you would ask me why I hesitated. I was going on to explain. In this meeting, I think this is the meeting at which I qualified and these trustees arranged all of these minutes at this time and they were brought up to date. I was present, but whether acting in the chair so I would absolutely have my attention called to a resolution of this kind, or just sitting there incidentally, I cannot say.

Q. You think it is possible, then, they passed this resolution effecting your salary and you were present and did not know anything about it?

A. No; it is possible that they would pass this rule and even I myself would vote upon it without its effecting in my mind the thought that I was getting the \$400.00 a month.

Q. There was nothing in there about \$400.00 a month?

A. Mr. Schrock was the financial man of the Pacific Live Stock Association.

Q. Now, Mr. Schively, I will have to ask you to confine yourself to the question.

A. All right.

Q. We will get along much more rapidly than with this voluminous explanation. If you were receiving a salary of \$400.00 a month, why did you not have that in the minutes that were passed at that time, instead of simply reference to the commissions that Ward got, which was a millage basis?

A. I see no reason why it would be included in the minutes.

Q. You made no effort to have it included in the minutes, did you?

A. I made no effort to have it included in the minutes.

Q. Now, you understood the method of bookkeeping of the Live Stock Company, did you not, Mr. Schively?

A. I never did.

Q. You never did?

A. I never did.

Q. Never looked in their books at all?

A. Not after I was an employee.

Q. The most of the books they had consisted of a cash book, journal and ledger?

A. Yes.

Q. You had examined those?

A. Not closely. If I looked at them, it was simply incidental. I did not look into the books.

Q. You don't know whether you had an account in those books?

A. I never looked to find the account, to my knowledge.

Q. Do you know they would naturally have an account with you if you were in there as an employee, or connected with them?

A. I kept my account between myself and Mr. Schrock. I kept my own account in my own book in my own pocket.

Q. You never looked inside the ledger while you were there?

A. Not to my account, that I remember. I paid no attention to—

Q. You say you got a flat salary of \$400.00 a month?

A. Yes, sir.

Q. Straight out. You did not receive anything in addition to that at all?

A. Not that I remember.

Q. Well, how do you account, then, for this credit that you have got here for an item of \$30.00 commission that is shown on the books and which you state is included in your settlement with Schrock, if you did not get any more?

By Mr. ISRAEL: If the court please, the witness has not testified that he never received an item of commission.

By Mr. MANAGER EDGE: As to what the witness testified, I think that my memory is as good as Mr. Israel's.

By Mr. ISRAEL: Then, I will ask you to turn to the proceedings and read it.

By Mr. MANAGER EDGE: I will do that later. You are not on the stand now.

BY MR. ISRAEL: The witness is entitled to have his mind refreshed by the record itself.

BY THE PRESIDING OFFICER: Let him make his explanation when he starts to give his testimony.

[Question read.]

A. I did not so state. I stated that when the company did settle with Mr. Schrock, I said, "Schrock, you owe me \$30.00. The company owes me \$1.50 for stamps."

Q. What was the \$30.00 for?

A. I do not know.

Q. Well, you stated that he owed it to you.

A. Mr. Schrock owed me \$30.00.

Q. What for?

A. He borrowed it from me—got it from me in some way.

Q. Did he borrow \$30.00 from you?

A. I don't know. He owed me \$30.00 and acknowledged the debt in settlement of the claim.

Q. And you do not know what it is for?

A. No, sir.

Q. And will not now testify what it is for?

A. No, sir. We were borrowing money from each other all the time there.

Q. You were. How much did you borrow from him or him from you?

A. I don't know. I only know that when we came to settle Mr. Schrock owed me \$30.00, and he paid it.

Q. Will you say that that was for borrowed money, then?

A. I don't know what it was for.

Q. Did you have any other money transactions between each other except on a borrowing and loaning basis?

A. As among ourselves, as trustees, we were borrowing from each other, loaning to each other and paying it back. I had in my book when I came to settle the item that Schrock owed me \$30.00.

Q. Have you got that book with you?

A. I have not.

Q. Do you know where it is?

A. It is destroyed.

Q. Can you remember the items of your account?

A. I cannot.

Q. How do you happen to remember the \$30.00 account, if you cannot remember any of the other items?

A. Because there were only one or two items in dispute about which we had the talk.

Q. That \$30.00 was necessary to make this account square up, on your theory; you did remember that?

A. Not on my theory. On the facts as they were in my book and on the facts as they were in his mind, he paid me the \$30.00 and raised no question about it.

Q. Then, you never did get any commission on the side, outside of the \$400.00; is that correct?

A. That is correct, so far as I know.

Q. How does it happen, then, Mr. Schively, that in the journal of account during September you are credited with an item of \$20.00

as commission on a thousand dollars insurance that seems to have been written by you; how do you account for that item of \$20.00?

A. I do not account for anything in those books.

Q. Do you mean to say that that was wrongfully credited to you?

A. I do not know about those books at all.

Q. As millage on the thousand dollars of insurance which was written by you?

A. I never paid any attention. I do not remember to have written any insurance. There was one occasion in which an application came to the rooms of the association, to the office of the association.

Q. How much was it?

A. I do not remember anything about it. They were laughing about it among themselves, and they said—I have a memory of some one saying—"We will give this to Schively because he is the only one here in the office." There was something said, and I paid no attention to it whatever.

Q. What was the amount of premium that was given with it?

A. I have no idea.

Q. Did you tell them that you would take it?

A. I beg your pardon—the premium given to me?

Q. Yes?

A. I don't know whether there was any premium given to me or not.

Q. There was something said about your being credited with it?

A. There was nothing said about me being credited with it. There was something said about it being given to me.

Q. Did you take it?

A. I don't remember whether I did or not.

Q. Was it paid in cash?

A. I don't remember anything about that matter. I simply remember something was said openly one time about one application that came in unsolicited.

Q. You went there to adjust the affairs of the company, and, if possible, to get them on a proper business basis?

A. Yes, sir.

Q. And that was the reason that you say you received this salary?

A. What is that?

Q. That was the reason you were being paid this salary?

A. Read me the previous question.

[*Last previous question and answer read. No answer to last question.*]

Q. And you remained in the office most of the time that you were there; you did no field work, in other words?

A. I did no field work.

Q. And you were with the company, or in its employ, something over three months, or about that time?

A. From the 10th of July until the 8th of October.

Q. And yet you never looked into the ledger, the journal or the cash book of the company to ascertain its method of keeping accounts?

A. I paid no attention to that. That was not a part of my details.

Q. You did not consider it was a part of the manager's duties



to know anything about the books of the company that you were working for?

A. I was not the manager.

Q. What were you?

A. I was the president. Mr. Schrock was the manager.

Q. And you did not consider it was any of your business to know anything about the books of the company?

A. I discovered early after I entered the company I was absolutely powerless. Mr. Schrock was the manager and Mr. Schrock's name alone made the check good. I was powerless, and the only thing I did was immediately to tell Mr. Schrock I wanted to be let out.

Q. So you admit that after these notes were paid you were willing to go on a millage basis?

A. If I was to remain there after the second or eighth of October or tenth, whenever the time should run out (it was somewhere in October, I was informed, that this would run out), then I was to decide whether it was to come to me—all of Mr. Ward's rights and commissions; it was all to come to me then, after Mr. Ward's indebtedness or pay had been worked out. But before that time came I had given my resignation and hence nothing further was said about millage or commissions or anything else.

Q. About how many days' actual time did you put in for the company while you were there in its employ?

A. I could not state that; I could not definitely answer that question. I was running back and forth doing work over there as president and doing work over here as the deputy insurance commissioner.

Q. You say when you settled up you settled up on a basis of two days less than three months, having gone to work on the 10th of July and stopped on the 8th of October?

A. Yes, sir.

Q. And the two days were deducted?

A. And the two days were deducted.

Q. How did it happen that they did not deduct the two weeks you were gone at the start off?

A. Because I was then in the employ of the association, and was allowed to go to attend this meeting at Denver. I was there on a vacation allowed by the trustees.

Q. You took the first two weeks of your time as a vacation when you went to work?

A. Yes, sir; I was elected with that understanding.

Q. You made an entry in your diary any time any checks were given you in payment of salary?

A. I made a check in my diary any time I received any money from the Pacific Live Stock Association that would be chargeable against my salary, whether it was checks or money or whatever it was.

Q. You know of no reason by which the company was to use Ward's facsimile after you became president of the company?

A. I do not remember any such arrangement.

Q. Do you know as a fact whether or not the facsimile was used?

A. I do not.

Q. Do you remember of having a conversation with Ward and Schrock about the time you went into the employ of the company, in which you stated that you would like to use or like to have Ward's facsimile used, so that you would not appear for some time as president of the company?

A. That is possible. I do not remember it, however.

Q. You say that is possible?

A. Yes, sir.

Q. It is possible, or was an arrangement made then, to use Ward's facsimile?

A. I remember nothing of the kind.

Q. Do you remember making the statement to them that you did not care for the time being to be known as connected with the company over there, so long as you were at the same time deputy insurance commissioner?

A. I do not remember that conversation.

Q. If such a conversation had been had, you would be very likely to remember it, would you not?

A. I do not know whether it would impress itself on my mind especially.

Q. It might have happened and it might not?

A. It might have happened and it might not.

Q. Now, when you finally settled with Mr. Schrock, you say that you produced this diary account?

A. I produced my account.

Q. What time in the day was that, if you remember it?

A. I do not remember. I imagine that was some time in the morning.

Q. And you settled with him there on that basis?

A. Settled with Schrock that day by his giving me \$260.00 and some odd cents in settlement of my claim against the association.

Q. Did you have the books before you at that time—your ledger account?

A. The books of the association?

Q. Yes?

A. No, sir.

Q. Do you mean to say that Mr. Schrock settled with you without going to your account in the books to find out what you had coming?

A. After I had settled with Mr. Schrock as to what was coming to me—gave these various items to Mr. Schrock—I said, "John, I want this account settled rapidly, because I am to go with Mr. Liggett to examine another company." He said, "I will consult the book-keeper about that." And I said, "How long will it take you?" He said, "I do not know." And after that, and after his stating this, some time either that morning or the afternoon of that day, I went to him and said, "Did you find that it was correct?" He said, "I found that it was correct"; and he gave me the check.

Q. Had he written it out at the time you appeared?

A. I am not certain about that. I think he had, but as to that I would not swear positively.

Q. You say he came back and told you. Did you tell him how much you had coming?

A. I told him how much I had coming in my conversation in the morning.

Q. \$260.50?

A. \$260.00 and some odd cents.

Q. And he told you that he would look over the books and see you later in the day?

A. Yes, sir.

Q. You came back and he gave you a check for \$260.50?

A. Yes, sir, \$260.00 and some odd cents.

Q. Well, the amount of the check. And you did not see this statement then until the next day?

A. I did not see that statement until the next day or the following day.

Q. This statement was not shown to you prior to your settlement with the company?

A. Prior to my receiving this check of \$260.00?

Q. Yes?

A. No, sir.

Q. It was not exhibited to you before?

A. No, sir.

Q. Were you fully cognizant of everything that took place at the time this statement was made, Mr. Schively?

A. I was.

Q. You were not in anything like a similar condition to what you were in when the contract was entered into?

A. No, sir.

Q. What time in the day was that gotten?

A. I do not remember that.

Q. Was it in the morning or afternoon?

A. It was either in the late morning or in the afternoon.

Q. During banking hours?

A. I do not remember that.

Q. I notice that check was cashed— The reason I asked you whether or not you were in possession of your faculties, I noticed that you cashed that at one of the saloons across the street—a check for \$260.50. Do you remember whether you took this across to the bank first or not?

A. The probabilities are I did not take it first to the bank, if that indorsement is on it.

Q. There is the check [*hands check to witness*—\$260.50.

A. Yes, sir.

Q. Now, testify if you can where you got it cashed?

A. I got that check cashed at the saloon of Mr. Jack Wilmot, who is a friend of mine.

Q. And what other indorsements are on it?

A. That second indorsement, I do not know. It looks like—

Q. I might say to you for your information that the name there is Henry Sorg.

A. Yes.

Q. Did you cash it with him?

A. I do not remember.

Q. Now, when you came back with this agreement, you say you were getting \$400.00 a month. Do you know that the other trustees—when all the insurance ran to not over \$200,000.00—that their salary was \$600.00 a month, on the three-mill basis; you understand that, do you, Mr. Schively?

A. Shortly after entering, Mr. Copeland and myself had a conversation, in which he said that he was getting \$400.00 a month. My impression is that when Mr. Copeland said that that I came to the conclusion that they were all getting \$400.00; that that was their limit—the limit of all of them.

Q. You only understood that they were getting \$400.00, then, for the time being?

A. I am not ready to swear that that was my definite knowledge. I am ready to swear, to assert that I paid little, if any, attention to

what they were getting other than that Mr. Copeland found out the aggregate that they had received and Mr. Copeland and myself were talking together over passing a motion to cut it all to a—

Q. Now, you are getting away from the question. I asked you, Mr. Schively, if you don't know the three-mill basis the other trustees were getting amounted to \$600.00 a month?

A. I paid no attention whatever to what they were getting. I knew they worked on a commission basis.

Q. When you looked over this statement at the time, did you have any conversation with the bookkeeper in reference to this account?

A. None whatever.

Q. You came back to the office and they told you the account was wrong, you say?

A. Yes, sir; Mr. Schrock told me.

Q. And he said that the books showed you owed the company?

A. Yes, sir.

Q. Now, did you go to the bookkeeper then to talk about it?

A. I did not; to the best of my knowledge, I never conversed with the bookkeeper on the subject.

BY THE PRESIDING OFFICER: The court will take a recess for ten minutes.

BY SENATOR FALCONER: I want to make a motion now, Mr. President, that during the rest of this trial, no person shall be allowed on the floor of this Senate who is not a member of the legislature, or a witness for the purpose of testifying, a member or an employee of the Senate.

BY THE PRESIDING OFFICER: It is moved and seconded that all persons other than the legislature members, press, witnesses and employees of the Senate—witness only for the purpose of testifying—shall be excluded from the floor of the Senate.

BY SENATOR BRYAN: I move to amend that motion by adding that we do not exclude the state officers from the floor.

BY THE PRESIDING OFFICER: You have heard the motion; all in favor say "Aye"; contrary "No." The ayes have it. I will say, however, that by including state officers you make it possible for Mr. Donovan to be on the floor.

BY SENATOR FALCONER: Now, I think it will not be possible, for the reason that he will not come under the head of a state officer.

BY THE PRESIDING OFFICER: The chair will exercise its discretion.

BY MR. MANAGER EDGE: Q. Mr. Schively, we were discussing that statement with Mr. Schrock at adjournment; if you settled with him on a flat basis, will you kindly explain why you made calculations, taking into consideration the sum of \$578.70 in one place and \$563.65 in another place, which were the amounts as shown by the ledger you are credited with upon a millage basis?

A. Yes; in the first place, he told me that I owed the association \$400, and I took the paper and looked at it. And I first said to him—You want this whole scene described?

Q. I want to know why you used the figures in your calculations indicating the exact amount you were credited with on a millage basis, in the ledger at that time?

A. When Mr. Schrock said to me that I owed \$400 to the asso-

ciation, I said to him, "John, you know that is not so—that you and I settled and you were satisfied at the time of settlement; now where do you get this \$400?" And he said, "We get it on the basis of this report of the bookkeeper to the trustees." I said, "Let me see that," and he handed it to me, and I happened to see that up till July 10th, there was three amounts charged. "Why," I said, "here are three amounts charged, and came to the conclusion that these amounts would cover the \$400, so I added them together and they made this \$351.75. Now, I said, "That doesn't cover the ground; you give me your figures—you explain it to me from your standpoint"; and then he began to call off himself these numbers, and I put them down. He said put down so and so, subtract so and so, put down this, subtract it or add it and I was doing so until I finally looked up and said, "Why, we are getting further and further from it. You are using sums here, \$600, \$500, and \$400," then I looked at these items here and I saw \$400, and I said, "You know that you never gave me a check for \$400, and you know that when I left here and you gave me that check, the account was right, don't you?" And he said, "Yes," and I said, "Then come in and explain that to the board of trustees, that when we settled the other day the account was right"; and we went in before the board of trustees and the announcement was made that the statement had been correct, that this paper was not correct, and that I stood without owing the association anything or the association owing me anything.

Q. Who were present at that meeting, if you recall?

A. So far as I remember, all the members of the board, together with the newly-elected member, Mr. Bennington, who took my place.

Q. Mr. Copeland was there?

A. I couldn't swear; I think so.

Q. Was there any statement made before that board that you were receiving a flat salary of \$400, by you or any one else?

A. At this time?

Q. Yes?

A. I don't remember anything of the kind. That didn't recur again.

Q. Then you don't know whether there was or was not a statement made that you were getting \$400, in the presence of the other people, other than yourself and Mr. Schrock?

A. There were no statements—Why should such statement be made? It didn't turn on what should have been received, but what had been received in bulk, also.

Q. Then, the sum of \$573.65, the amount of your millage, was put down by you as dictated by Mr. Schrock?

A. Yes, sir; I first started, until I saw that the figures didn't make the \$400.

Q. Which were your figures you made on your own responsibility?

A. The first three items—simply seeing that they were upon the 10th and noting the first ones, I put them down without analyzing anything; I put them down before I noticed anything, and the three figures; they didn't make the \$400, and I said there must be something else, and you call from your figures and I will put your figures down.

Q. Did you tell him \$351 was wrongfully charged at that time?

A. I simply said that wouldn't make the \$400, and called his attention to the discrepancy.

Q. Did you object to the items making up the \$351—the \$74 and the \$77 and \$200—at that time?

A. In what respect?

Q. As being wrongfully charged to you?

A. I didn't object one way or the other, make any assertion; I simply said, "Here are some items here and that is probably where your mistake is," and I added them together and I found that they didn't answer to the four hundred, and I turned to him and I said, "Now, you give me your figures."

Q. You mean to say, then, that Mr. Schrock told you to subtract the \$563.65 from the \$600, and you did that?

A. I mean to say the first part of that, from looking at the figures and the balance, I put down from the calling off by Mr. Schrock. I says, "Here is \$400, I think in August; here is \$400; \$400 in September and \$400 in October," and I says, "You know I never received that."

Q. You didn't mark anything on the paper except these check marks of your own responsibility, did you?

A. Those figures at the bottom.

Q. Those were all dictated to you?

A. That is my impression, and I don't know otherwise how I got that.

Q. They were senseless, so far as you understood?

A. They, so far as I understood, didn't reach anywhere or arrive anywhere.

Q. When did you see the notes that were given, if at all?

A. The first time I saw the notes was when Mr. Schrock produced them in his office, I think—when I took him to Mr. McDonald and demonstrated to Mr. McDonald that I didn't receive the \$1,200.

Q. When was that, before or after the grand jury had assembled?

A. That was probably a year or two before; it was at least a year before the grand jury had assembled.

Q. You knew at that time that some people thought you had signed those notes?

A. When I talked with Mr. McDonald?

Q. Yes.

A. I didn't even then suspect; I took him to prove to Mr. McDonald these notes were made payable to Mr. Ward, and not to me. It hadn't entered my mind that my name was on those notes.

Q. Didn't you understand that the notes were made payable to you?

A. Never dreamed of it.

Q. Then how were you concerned in looking them up if they weren't made to you or by you?

A. Because the newspapers all charged me with getting this \$1,200.

Q. And being connected with these notes—they charged you with being connected with these notes?

A. The question of notes, I don't remember to have been mentioned. It was that I had received in bulk some \$2,400 or \$2,500, and I immediately said that I never got the \$2,400 or \$2,500, and I began to trace that down; this was in March or April of 1907.

Q. Now, didn't you know at that time that you were reputed to be connected with, in some way, those notes?

A. The question of notes hadn't been raised. It was a question of money that had been paid to Mr. Ward—\$1,200.

Q. And you saw the notes there and didn't read them in the office, as I recall your direct testimony?

A. I saw the notes in Mr. Schrock's office for the first time and didn't even take them in my hands. The question of my signature being on them wasn't raised; it was the question of who got the

money, and I demonstrated to Mr. McDonald that Mr. Ward got the money.

Q. And you wanted to show that the notes were payable to Mr. Ward and not to you?

A. And not to me.

Q. And yet you didn't look at them to ascertain that fact?

A. I didn't look at them. I saw the notes brought out by Mr. Schrock, and felt so confident that they were made payable to Mr. Ward, as they were in Mr. Schrock's hands. To the best of my memory, I said, "There they are, Mac.; look at them and tell me if I got that money."

Q. What did he say?

A. He said I didn't get that money; that they were made payable to Mr. Ward.

Q. You didn't look at them to see who they were made by, did you?

A. No, sir; it never entered my mind that my name was in any way connected with them.

Q. Did Mr. Schrock take them away with him after that?

A. He simply got them. They were in Mr. Schrock's office.

Q. How long did you stay there talking over the notes?

A. Well, five, ten—not over fifteen minutes. I simply went to demonstrate that fact, and did demonstrate it.

Q. You went there for the purpose of settling the question about these notes?

A. No, sir, I didn't go there with that intention.

Q. Didn't you testify in your direct examination, Mr. Schively, that you and Schrock went up in McDonald's office?

A. Yes, sir.

Q. And talked with him alone there?

A. Talked with McDonald.

Q. Were the notes present at that time?

A. No, sir; this was a year after that transaction concerning which I am now testifying.

Q. Well, you and Schrock and McDonald were together, then, on two different occasions—once before the grand jury and once afterwards?

A. Once in March or April of 1907, and once again in May or June of 1909, after the meeting of the grand jury.

Q. Did you ever look over the account in the book, the ledger?

A. Which account?

Q. Your account.

A. No, sir, not to my knowledge or memory.

Q. And when Bennington took your place finally, that was a matter in which you were not interested, as I understand your testimony in chief?

A. Not in the least.

Q. You had nothing whatever to do with Mr. Bennington at that time?

A. Nothing whatever.

Q. Did you ever—Where did you meet the man?

A. Mr. Schrock brought him to the office of the Pacific Live Stock Association and introduced him to me, or me to him, as the case was—introduced us to each other.

Q. And there was nothing said there about any settlement with you in order for you to leave the company, in your presence?

A. Not to my knowledge, nothing whatever.

Q. You are not to be credited with this four hundred dollars which the account shows?

A. Not to my knowledge.

Q. You know absolutely nothing about that transaction?

A. I know absolutely nothing about that transaction. The only conversation I had with Mr. Bennington referred to the standing and prospects of the association—the reason of my leaving.

Q. You had been with the company some three months and had ascertained from this source that you could not get along. That is true?

A. Yes.

Q. And that the policy of the company could not be changed by you in being connected with the company?

A. It could not be.

Q. And it was unsatisfactory for you to remain with them?

A. It would shortly develop into the position that would leave me out.

Q. You say it was an undesirable state of affairs, so far as you were concerned?

A. It was becoming such.

Q. And had you known that condition at the beginning, you would not have gone into it?

A. I would not have gone into it.

Q. Nor would you have advised any one to go in under those circumstances?

A. I would not advise any one to go in under those circumstances, unless, as I said to Mr. Bennington, if he was able to dominate the position.

Q. How does it happen that a month later you wrote this letter to Mr. Melvin, at Everett, stating that it was an absolutely reliable and stable insurance company—a month later—if you had left on account of an unsatisfactory condition of affairs?

A. I did not leave because of an unsatisfactory condition of finances. I left because of an unsatisfactory condition of management. Mr. Bennington, who claimed to be a good business man, was satisfied he could dominate the board of trustees and put good business methods into it, and was willing to go and take my place, and he did so. I believed then that the affair, if properly managed, would have been solvent and made a good success.

Q. And you felt perfectly safe in recommending this concern to some one when you would not go into it under the circumstances that existed at the time?

A. I did not make any such recommendation. The position I was in was one of being between two fires. There was no criticism of the financial condition of the company, or the prospect of its success. I so said to Mr. Melvin—

Q. Now, explain why it was necessary to buy Mr. Ward out, when they, if they desired it, could get rid of him, could have put him out by a simple vote of the board of directors?

A. I don't know.

Q. You know it to be a fact that they could release any director, and you were fearing that very conclusion yourself—that they would vote you out?

A. I was.

Q. You knew they could do that with Ward, if they were so disposed?

A. I don't know whether that resolution was passed for my benefit



when I came in that night, or when it had been passed. I discovered that a resolution of that nature had at some time been passed, and that that power inured with the trustees, and I feared that power and I stepped out.

BY MR. MANAGER EDGE: That will be all for the present on this matter.

*Cross-Examination—*

BY MR. LEE: Q. Mr. Schively, continuing now as to the matter of the articles in reference to some of your direct examination—you were deputy insurance commissioner, I believe you said in your direct examination, from 1901 to 1909?

A. Yes, sir.

Q. As said deputy insurance commissioner, you had the right, didn't you, to demand entrance fees, issue certificates, revoke certificates, and make examinations?

A. No, sir.

Q. You did not have that right?

A. No, sir.

Q. And you never did it?

A. Not in—

Q. Answer the question.

BY MR. ISRAEL: I desire that counsel be instructed to let the witness answer the question.

BY MR. LEE: This will admit of an unequivocal answer. I am going to give this witness every opportunity to explain.

BY THE PRESIDING OFFICER: He started to answer. Let him answer before you interrupt.

A. I never did, if Mr. Nichols was in the state, and was well enough to be present at the office.

Q. As following up that explanation, I will ask you if when Mr. Nichols was in the state, and well enough to be in the office and was in the office, did he make these references to these companies; did he write these letters, and did he receive this money?

A. He instructed me to write these letters.

Q. Oh, you did it under his instructions?

A. Yes; it was the departmental policy.

Q. Now, are you acquainted with the law that said that such deputy insurance commissioner, in the absence of the insurance commissioner or his inability to perform the duty, could perform the duty?

A. Will you state that again?

BY MR. LEE: Read the question.

[Question read.]

A. I was familiar with the law.

Q. And you say you performed the duty?

A. Of deputy insurance commissioner.

Q. And is it not a matter of fact that this department was turned over to you and you had practically control of it?

A. It was not.

Q. How does it come that you wrote all of the letters; that you received the money; that you cashed the checks; that you issued the receipts and that you issued the certificates?

A. I did all of that in the usual routine work of the department, under the instruction of its head.

Q. And is it not a fact that when you went into your office in 1901, Sam Nichols, *ex-officio* insurance commissioner, said, "I am going to turn over this department to you," and he did?

A. He never said that in his life.

Q. Is it not a fact that from 1901 until 1909, when your last biennial report was made out, you reported to the commissioner the absolute condition of the insurance commissioner's department in this state?

A. I reported to him annually as said insurance commissioner of the state.

Q. In that report did you not detail to him everything that transpired in the department?

A. I did.

Q. Is it not a fact that some time after you had some control of that department?

A. I don't like your suggestions; is that after I had limited control of the department?

Q. Then, in other words, you want to tell the Senate you were discharging ministerially the functions of an employee?

A. I do— I don't mean to say in direct answer to your question. You confound me by the use of your terms.

Q. I don't want to confound you by the use of my terms. I want to be fair and make the questions intelligible.

A. I was performing the work allotted to me—the work of deputy insurance commissioner allotted to me by the insurance commissioner.

Q. Don't you know it wasn't necessary to be allotted to you by the insurance commissioner, but it was allotted to you by the statutes of this state?

A. I was so told.

Q. Then, you want to say you have been familiar with the statutes of this state from 1901 to 1909 relating to the insurance commissioner's department?

A. I was.

Q. Are you familiar with the statute—or were you familiar with that particular statute which said that when companies entered this state they had to pay an entrance fee of \$35.00?

A. I was.

Q. Were you familiar with that statute during the entire time of your incumbency?

A. I was.

Q. Were you familiar with that statute which said that when the insurance commissioner or his deputy may examine all the insurance companies, either domestic or foreign, the expenses incurred in that examination could be collected upon the presentation of a detailed statement of expenses?

A. I was familiar with that law.

Q. You spoke of something in your direct examination, Mr. Schively, of receiving advice from Attorney General Atkinson?

A. I did.

Q. What year was that in?

A. 1905.

Q. What month?

A. I do not remember the month. I think it was in the early part of the year.

Q. Did you or did you not state before the legislative investigating committee of this state, under oath, on or about the 15th day of

May of this year, Mr. McMasters, Mr. Taylor, Mr. Hubbell and Senators Fishback and Allen being present, that you did not remember the year in which that advice was given?

BY MR. ISRAEL: One moment. The proper way to impeach this witness, with testimony given at another time is by calling his attention to the question and the answer. You have them right there before you, Mr. Lee.

BY MR. LEE: I have called his attention to the time and the place and those present, and what was substantially said at that time, and I think I have done sufficient on this question.

BY THE PRESIDING OFFICER: I think that is all that is necessary. You may proceed.

[*Question read.*]

A. It is very probable I might have answered, because I did not at that time know the exact date.

Q. But since that time you have learned the year in which that advice was given?

A. I have.

Q. Have you learned the month?

A. I have not.

Q. Don't you know it was a fact that General Atkinson testified before that committee that that advice was given in January, 1907?

A. I am not responsible to General Atkinson.

Q. Do you know whether or not he made that statement?

A. I do not remember; I am not familiar—I do not remember what; I was not present—

Q. Answer the question.

A. I do not know what General Atkinson testified before that committee; in so many words, I was not present when he was examined.

Q. Do you not in substance and effect know that this advice was given in January, 1907?

A. I do not believe—

Q. If he gave that advice, is he mistaken—that statement that the advice was given in 1907?

A. He gave me that advice in 1905.

Q. Read the question.

[*Question read.*]

A. General Atkinson gave me that advice—to Mr. Nichols and myself—in 1905.

BY MR. ISRAEL: That answers the question.

BY MR. LEE: I do not understand that answers the question.

BY THE PRESIDING OFFICER: Answer the question.

BY MR. ISRAEL: That is not a question—

BY THE PRESIDING OFFICER: Read the question.

[*Question read.*]

BY THE PRESIDING OFFICER: It seems to me it is an answer to the question.

BY MR. LEE: All right; if the president thinks it is an answer, I am satisfied.

Q. You are satisfied that the advice was given in 1905?

A. Yes, sir.

Q. Do you remember the month?

A. No, sir.

Q. Do you remember the time of the year?

A. I do not.

Q. How do you remember the year?

A. From correspondence with the department—from correspondence as to the fact that the letters of that character were not written before 1905.

Q. Those letters demanded an entrance fee for verification of report of two hundred dollars?

A. In advance?

Q. Are you willing to go on oath before this Senate that that amount was not demanded before the year 1905 from your office?

A. I am not.

Q. Why are you not?

A. Because, as far as I could search the records, I find we adopted that character of letter-writing in 1905. I found a letter dated 1904, in November or December, in which I wrote to the company saying we could examine the company. I found a letter in 1905 saying that the examination fee would be in advance. I therefore concluded that the conversation with Mr. Atkinson was in 1905, because we did not write that character of letter until we had consulted him.

Q. So your testimony in that connection here is established upon an investigation of your files—not upon your memory?

A. It is established upon an inspection of the official files of the department.

Q. State who was present at the conversation with Mr. Atkinson.

A. Mr. Nichols.

Q. Who else?

A. No one, as far as I remember.

Q. Where was that conversation?

A. I do not remember whether it was in Mr. Atkinson's office or my own.

Q. Do you think it would be probable he would come down to your office unsolicited and give advice?

A. Mr. Nichols and myself were searching and seeking this advice on this question, and whether we asked Mr. Atkinson to come to our office or whether we went to his office I am not able to say.

Q. Now, you say Mr. Atkinson advised you you would have authority to extract, or take or collect in advance an examination fee to cover examinations which would be made in the future?

A. Yes.

Q. Was there anything said about a flat examination fee at that time?

A. There was not.

Q. Did Mr. Atkinson advise you as attorney general of this state at that time that you could collect from each and every company coming into this state an advance entrance fee over and above the statutory fee of \$35, and could arrange the charge to suit yourself?

A. He did not.

Q. What was the advice?

A. That we could collect examination fees in advance.

Q. As a matter of fact, was not this the situation: Were you not intending at that time to make a few examinations, and not having the ready money, the examinations you were contemplating at that time would mean an expensive trip; you did not have the money, and you

went to Mr. Atkinson and asked if you could not collect in advance the money for these examinations?

A. In no sense of the term, because on such occasions Mr. Nichols and myself went to the Capital National Bank and borrowed the money from Mr. Lord.

Q. Was anything said to Mr. Atkinson in that conversation about going to the banks and borrowing money?

A. I am not positive.

Q. You are not positive?

A. No.

Q. You would not say it did not occur?

A. I would not say it did not occur.

Q. Acting upon General Atkinson's advice, you then proceeded to collect in advance examination fees from every company which entered the state?

A. We did.

Q. Will you state to this Senate if there was anything said in that conversation about wildcat companies?

A. To Atkinson?

Q. Yes.

A. I do not remember as to that.

Q. I thought you said upon the direct examination the very purpose of that interview with Mr. Atkinson was to ascertain how you could keep wildcat companies from flooding this state?

A. You have limited the scope of what I said. The discussion between Mr. Nichols and myself was to keep out wildcat companies that would come into the state upon an experimental basis, as in the case of Lebo with his two Texas companies—that was a combination. They were not all wildcat. These two companies Mr. Lebo brought here are reliable, substantial companies. They would come in on an experimental basis—or a company experimenting with a new manager—and wildcat companies, and companies whose policies had not been settled for—some of them had died—we took these as a whole to Mr. Atkinson.

Q. That is what I want to know, if you went to Mr. Atkinson and stated to him that these companies were flooding the State of Washington?

A. I am going to tell you—

Q. I will tell you in the question form and you answer. We can make more time. Did you or did you not go to Mr. Atkinson with the proposition that irresponsible wildcat companies were flooding the state; that the department had no time to examine them and you wanted to know whether or not you could raise a barrier in the way of advance examination fees?

A. That was settled upon by Nichols and myself, and the policy was to determine whether or not we could collect these fees in advance, and we went to Atkinson and asked him if we could collect them in advance.

Q. Are you able to state whether in that conversation with Mr. Atkinson any reference was made to a prior conversation with Mr. Nichols?

A. I might positively state—

Q. What was your purpose in going to Atkinson if he did not know the facts?

A. To find out if we could collect this examination fee in advance.

Q. Regardless of the insolvency of the company?

A. We simply wanted to know that one fact.

Q. In other words, you went to Atkinson and said, "General Atkin-

son, we want to know whether we can collect advance examination fees from companies in the state"; and he said "Yes," and you went out.

A. No, sir; I am not so testifying. I said that was the result of our conversation, and whether or not we entered into a full discussion of the matter I am not able to say.

Q. You do not remember whether you went into a full discussion of the matter?

A. I do not remember.

Q. Do you remember whether you mentioned any of these companies?

A. I do not remember.

Q. How do you remember with so much particularity that was the advice that he gave you?

A. Because that was the advice that we were after.

Q. So you got the advice without refreshing his memory or informing him as to any of the details?

A. I am not making that statement.

Q. Will you state now before we pass over this evidence whether or not you mentioned to Mr. Atkinson the wildcat and irresponsible companies coming into this state, and wanted to put up a barrier and keep them out?

A. I answer that question by quoting the language of my preceding answer.

BY MR. LEE: All right, make it the same answer, Mr. Stenographer.

Q. Preceding General Atkinson's advice you were erecting the so-called barrier to keep them out?

A. Yes, sir.

Q. Will you state to this Senate what wildcat, irresponsible company has ever been kept out that agreed to put up \$235?

A. What is that?

[*Question read.*]

A. There is an assertion in that question that there are wildcat companies in the state?

Q. Do you want to answer that or not?

A. I do not know how to answer that, because I do not know the import of your question.

Q. I will say it so as to make it intelligible. I want to be understood. Was any company ever kept out of the state that sent the \$235 entrance fees?

A. There was not—they were not—

Q. As a matter of fact, Mr. Schively, did not companies that came into this state and paid their \$235 either withdraw within a year—a great many of them—or go into insolvency?

A. A great many of them did not.

Q. A great many of them did?

A. What?

Q. Go into insolvency or withdraw?

A. No, sir; they did not go into insolvency or withdraw. Some of them did. The majority of them did not and are still operating in this state.

Q. Then I will ask you why it was that you erected this barrier of \$235 as to companies, whether they were responsible or irresponsible.

A. This barrier was raised as a test to these companies. The companies that knew themselves to be irresponsible, that knew they were

coming as an experiment, dropped the question at once. The companies that knew they were responsible, knew they were coming not as an experiment, knew they would sooner or later be examined, paid the money.

Q. Will you give the names to the Senate of some of the companies that refused to come into the state after you wrote them and made that statement?

A. I have a whole book full down stairs that were examined by Senator Fishback.

Q. Will you bring this book, together with the original letters written asking for the \$235 entrance fee? Are they accessible?

A. They are right in the office.

Q. Are they accessible.

A. Yes.

Q. How do you arrive at this flat rate of \$235 for each and every company, regardless of location, regardless of size, and regardless of financial responsibility?

A. We arrived at this result in a two-fold way. In the first place, this letter was written to fraternal, as well as the other companies. We limited visiting any fraternal company to a maximum of \$200 for those without a reserve, and \$400 to those with a reserve. That was one way in which we arrived at the conclusion. The second way is that Mr. Nichols and myself had frequently gone back east, and the result of our experience in prorating the expense was \$200, and we put these things together, each agreeing with one another to keep the flat rate of \$200.

Q. I will ask you why it was you demanded \$235 from a Denver company and \$135 from a Boston company.

A. Because the Denver company came into the state from the home office and the Boston company came into the state from—through a San Francisco manager—or a State of Washington manager. The department— Well, that will answer.

Q. Is that the explanation you have for charging some companies \$135 and some \$235?

A. The explanation of it is— I will go back and repeat. The Denver Fire Insurance Company came into the state through its home office in Colorado. The Boston Insurance Company entered the state through the San Francisco manager or a manager in the State of Washington. The insurance department of Washington had a consultation with the advisory committee of San Francisco managers, and at that meeting with the San Francisco managers the system was adopted of charging a rate of \$100.00 to the companies coming through the San Francisco managers.

Q. Did the San Francisco managers or the Boston Insurance Company have control of the books, records, and securities of that company?

A. They had only of the business transacted in this state, but not of the books at the home office.

Q. If it became necessary, then, to make an examination of the Boston Insurance Company, where would you have to go?

A. I would go to Boston, but if there was any question as to the solvency of the company, I would first get information of it through the San Francisco office.

Q. Would you go to Boston?

A. For which company?

Q. For the Boston Insurance Company?

A. I did not.

Q. Would you go to Denver for the Capital Life Insurance Company, of Colorado?

A. I did not.

Q. State to this Senate, then, what became of the \$100.00 collected from the Boston Insurance Company and the \$200.00 from the Capital Life Insurance Company?

A. When that money was received, the original intention was that Mr. Nichols and myself would examine these companies. When the money was received, Mr. Nichols received half of the money and I received the other half; so that when we did come to visit these companies we would each have our own expenses to pay for the examination, the same having already been paid.

Q. The companies had not yet been examined?

A. They had not.

Q. The money has been appropriated by you?

A. It has been appropriated for the purpose of paying the expenses to make this examination.

Q. State to this Senate whether or not when you got this amount and amounts from all other insurance companies, whether you kept those amounts as a trust fund to cover for your examinations.

A. We kept those as our own fees, necessary to make, when we made, these examinations.

Q. Suppose you have not made an examination for two years, as in article 4, where is the money?

A. The money is in the hands of Mr. Nichols and myself.

Q. Did you not say before the investigating committee of this state—

A. Now, when I say that, in the keeping of Mr. Nichols and myself, I simply mean that we are holding ourselves, or at least I am holding myself, responsible for the making of this examination. I do not mean to say I put that money aside.

Q. Have you got any of it now?

A. Not since these legal proceedings have been started against me.

Q. It has been spent?

A. It has been spent.

Q. In other words, you collected an examination fee of these two and from a great many other insurance companies and spent it?

A. Yes, sir.

Q. And you have not got any of it now?

A. No, sir.

Q. You don't know about Sam, do you, whether he has got any left or not?

A. I do not know about him, sir.

Q. Was it your custom up to 1909 to collect this examination fee from these companies and spend the money?

A. It was the custom of the— We received this money.

Q. Read the question.

[*Question read.*]

A. If we needed it, we spent it.

Q. I will ask you, Mr. Schively, to state to the Senate how much money you have received for examinations that have never been made?

A. I do not know.

Q. Can you approximate it?

A. I cannot approximate it.

Q. You stated to this Senate on direct examination that there were



182 companies admitted since you received this advice from John D. Atkinson. On the basis of \$200.00 apiece as an advance examination fee, that would be \$36,400.00. Upon your testimony in chief you stated that you paid to Sam Nichols one-half; that would leave you \$18,200.00. Will you state where that money is?

A. I did not receive that much money.

Q. How much, if any, of that money did you receive?

A. I do not know.

Q. You heard these depositions read in evidence relating to articles 3 and 4, did you not?

A. Yes, sir.

Q. Those depositions show that \$3,000.00 has been received within the last two years. Will you state where that money is?

A. I have already made the statement that when the money came for the advance collected fees, Mr. Nichols received one-half of it and I received the other.

Q. Well, will you testify what you did with your half?

A. It has gone.

Q. Where?

A. Largely in looking after my interests in these legal proceedings.

Q. In other words, it has been appropriated for personal matters?

A. Yes.

Q. Having nothing to do with the insurance department of this state?

A. Nothing whatever.

Q. Did you not, before the legislative investigating committee of this state, consisting of Messrs. McMaster, Hubbell, Taylor, Allen, and Fishback, under oath, on the 21st day of April, 1909, state that you had not gotten any money in for examination fees that you had not made examinations for?

A. What is that?

[Question read.]

A. What period does that cover?

By MR. ISRAEL: Why not read the question and answer?

Q. All right. Then I will ask you, Mr. Schively, if you did not give this testimony on the date and before the gentlemen mentioned:

“Q. ‘Following that statement out, how many fees have you gotten in for examinations which you have not made?’ A. ‘I have not gotten any.’” Did you or did you not make that statement?

A. You will have to read me— That is true as applied to my own administration and is not true as applied to the preceding administration. I don't know to which you are referring.

Q. The subject under that discussion was: “Q. ‘What became of this \$200.00 that you collected from these various companies?’ A. ‘Well, that has been used up—some of it—in examining companies. It still stands for those who are—that have paid it and have not been examined.’ Q. ‘Stands where?’ A. ‘Well, it stands.’ Q. ‘What form of account do you carry it in?’ A. ‘That is a sliding account.’ Q. ‘That is what—a sliding account?’ A. ‘Yes.’ Q. ‘How do you get it out of that sliding account—by personal check or by deputy insurance commissioner check?’ A. ‘No, that is not deposited in the name of the state—not deposited in the name of any official of the state.’ Q. ‘You have got that in a little bag of your own.’ A. ‘It is not state money. I have never looked upon it as state money; never looked upon it that the state had any thought or inquiry about that money.’ Q. ‘Is it not deposited in the bank as a trust fund or something of that kind, and

kept entirely separate from any other funds?" A. 'No, sir; it is not.' Q. 'Have you got any such funds on hand now?' A. 'I have funds to pay for these trips—' Q. 'I asked you if you had any such funds on hand now.' A. 'No, I haven't them on hand.' Q. 'I thought you said a moment ago you did have them on hand.' A. 'I say I hold myself responsible for the examinations to be made.' Q. 'This goes into your private funds then?' A. 'This goes out for expense of examination when the examination was made.' Q. 'Following that statement out, how many fees have you gotten in for examinations which you have not made?' A. 'I have not gotten any.' Did you or did you not make that statement?

A. I do not yet understand this question. Now, let me make the statement. It is conceded that we received this examination fee in advance. Are you now asking me to testify to this fact?

Q. I am asking you whether you did or did not give the testimony that I read before the investigating committee of this state?

A. That testimony, that language is unintelligible to me.

Q. It is partly yours, if it is, Mr. Schively.

A. Well, I want to know this. I have repeatedly said there is no question about it that I collected this money in advance of the examination.

Q. Again repeating the question, did you or did you not give that testimony to which I have challenged your attention before the legislative investigating committee?

A. You will have to read that to me again.

Q. Very well.

A. Do you understand that yourself?

Q. I certainly do.

A. Then will you tell me what is the question being asked? Just that part now?

Q. [*Counsel reads.*] "What became of this \$200.00 that you collected from these various companies?" You understand that, don't you?

A. Yes.

Q. That is what I have been talking about here.

A. Yes.

Q. [*Reading.*] "A. 'Well, that has been used up, some of it in examining companies; it still stands for those who are—that have paid it and that have not been examined.'"

BY MR. ISRAEL: That means you got it and it has been accessible.

BY MR. LEE: This means his answer is unintelligible and he got it himself, if you like.

Q. [*Reading.*] "Q. 'Stands where?' A. 'Well, it stands.' Q. 'What form of an account do you carry it in?' A. 'That is a sliding account.' Q. 'That is what—a sliding account?' A. 'Yes.' Q. 'How do you get it out of that sliding account—by personal check or by deputy insurance commissioner check?' A. 'No, that is not deposited in the name of the state—not deposited in the name of any official of the state.' Q. 'You have got that in a little bag of your own?' A. 'It is not state money. I never looked upon it as state money; never looked upon it that the state had any thought or inquiry about that money.' Q. 'Is it not deposited in the bank as a trust fund or something of that kind and kept entirely separate from any other fund?' A. 'No, sir; it is not.' Q. 'Have you got any such funds on hand now?' A. 'I have funds to pay for these trips—' Q. 'I asked you if you had any such funds on hand now?' A. 'No, I haven't them on hand.' Q. 'I thought you said a moment ago you did have them on hand.' A. 'I say I hold myself re-

sponsible for the examination to be made.' Q. 'That goes into your private funds, then?' A. 'That goes out for expense of examinations when the examination was made.' Q. 'Following that statement out, how many fees have you gotten in for examinations which you have not made?' A. 'I have not gotten any.' Now, do you understand that?

A. I understand that that is asking me the question if I received fees for examinations which have not been made.

Q. Exactly?

A. I have received a great many fees for examinations which have not been made.

Q. Then your answer was, when you said, "I have not got any"—that means that you have not made any examinations?

A. That means I have not made any examinations on these advanced fees.

Q. So that is your explanation of your answer at this time, is it?

A. That is the answer to the fact.

Q. Well, without quibbling about it further, as a matter of fact you have gotten in the examination fees and you never have made the examinations, have you?

A. That is the fact.

Q. As evidenced by these fifteen depositions here?

A. That is the fact.

Q. So that this statement was either misunderstood or erroneous, was it?

A. Either misunderstood or erroneous.

Q. Well, we will take the charitable view of it, Mr. Schively, and say it is erroneous. Now, about the Lebo instance, in your direct examination you stated that after Mr. Lebo asked for a refund of the \$100.00, you put up \$50.00 and Sam H. Nichols put up \$50.00?

A. Yes, sir.

Q. Does that imply and did it imply and was it a fact that when you got in the \$100.00 from Mr. Lebo, you split it into halves and put it into your jeans?

A. When we received the money, yes, sir.

Q. And you did that in each and every other case?

A. Yes, sir.

Q. And that was your practice for a long period of years?

A. From practically 1905.

Q. Would you say that it was not your practice before 1905?

A. I would be very safe, I think, in saying it was not.

Q. Are you willing to go on oath and say not?

A. The records will show that.

Q. Are you willing to go on oath and say that you never did this prior to Atkinson's advice?

A. I am.

Q. And you are not able at this time to approximate—

A. As a practice.

Q. Did you do it, whether you did it as a practice or not?

A. I don't think it was ever done before the advice of Mr. Atkinson, the attorney general.

Q. Are you positive it was not done?

A. I am as positive as I can be of anything in the past.

Q. Are you positive of very much in the past?

A. I am.

Q. And you are not able to approximate at this time to this Senate how much money you have received in the way of advance examination fees?

A. I am not.

Q. It might be three and it might be thirty thousand dollars?

A. It was certainly not as high as \$30,000, by any means.

Q. Then I will ask you, Mr. Schively, how it is that since you have testified that you have exacted this advance fee from every company, and 182 companies have entered this state since Atkinson's advice was given—I will ask you if 200 times 182 don't make the amount I called your attention to awhile ago.

A. I have not testified that every company that entered the transaction of business in this state paid that \$200.00.

Q. How many and what percentage of the companies did pay it?

A. I did not know.

Q. Can you approximate it?

A. The home companies—not one of the home companies paid it.

Q. Outside of home companies, can you approximate it?

A. A great many of the outside companies, all of those coming through the San Francisco managers or the State of Washington managers, only paid \$100.00.

Q. You had some arrangement with San Francisco, didn't you?

A. Yes, sir.

Q. Notwithstanding the fact that they represented companies in the Atlantic states?

A. Yes, sir.

Q. Have you got any records in the insurance department of this state to show from what companies these fees were collected?

A. I have not.

Q. Then state to the Senate how you are able to know whether or not to examine the companies.

A. These companies that are transacting business in this state are all being examined.

Q. That is your explanation, is it?

A. Now, may I finish?

Q. Certainly.

A. If I should go to the Boston Insurance Company, or send an examiner to the Boston Insurance Company to have this company examined, and a bill was presented to the Boston Insurance Company with the statement of expenses, and the Boston Insurance Company should give to that examiner a voucher showing that it had paid for the costs of examination, the Boston Insurance Company would not be asked to again pay for that examination. I would acknowledge myself personally responsible thereafter for the expenses of that examination.

Q. So that is the only way that you know what companies in the United States have paid you an advance entrance fee?

A. Yes, sir.

Q. Is by yourself going and examining them, and they say, "We have paid the fees"?

A. Yes, sir.

Q. That is the only way?

A. Yes, sir.

Q. Otherwise you have no record and you cannot approximate how much you received in this direction?

A. That is correct.

Q. And you have absolutely no record in your office?

A. I have not.

Q. I will ask you again if you are able to approximate the money that you have received from this source?

A. I am not.

Q. Are you able to approximate it in thousands?

A. I am not.

Q. Are you able to approximate it in hundreds?

A. I am not.

Q. Would you say that within the last four years, since you had received the advice from John D. Atkinson, that it did not exceed \$10,000.00?

A. I would not say on which side of the \$10,000.00 it rested.

Q. If it was \$10,000.00, you are willing to say that you got half and Mr. Nichols got half?

A. I am.

Q. And you have none of that money now?

A. No, sir.

Q. And the only way you know how to ascertain that you did receive it was to go to the companies and examine them and have them say, "Why, Mr. Schively"—or whoever did it—"we have already paid for that examination."

A. Yes, sir.

Q. In connection with this other matter, Mr. Schively, you testified you kept the diary of what money was paid to you and what money you paid out. Did you keep any diary in this connection?

A. I kept an expense account. In which connection?

Q. In the connection of examining companies, receiving money and disbursing money?

A. In advance?

Q. Yes, sir?

A. There was no diary account kept of that. Division was made at the time of the receipt of the money.

Q. Did you keep any official diary?

A. Of this examination fee, no.

Q. Now, you stated that you did not have time; that is one of your defenses here in your direct testimony, as I understand it. You had time to go to the Pacific Live Stock Association and spend considerable of your time there, didn't you?

A. I went there in the year of 1906, between the months of July and October, very frequently. I was there a large part of the time.

Q. You testified in your direct examination that you went to Masonic and Elks' conventions or lodges?

A. Yes, sir.

Q. You had time to do that, didn't you?

A. In July.

Q. You testified in your direct examination that you went to Portland and Walla Walla as an expert; you had time to do that, didn't you?

A. I was there.

Q. And yet you did not have time to examine any of these companies, whether in neighboring or foreign states?

A. In order to examine a company—any of the companies that were brought in under this advance fee—it would take at least a month out of the time of the department.

Q. Do you mean to say to this Senate that each and every company out of the 182 that have been admitted since John D. Atkinson's advice to you could not be examined in less than thirty days' time, considering the time in going and coming?

A. I never went back east to examine one company alone.

Q. Have you any record in your office of the companies examined?

A. I have of the majority of them.

Q. Did you not state before the investigating committee of this state on or before the 16th day of April, 1909, under oath, that you absolutely had no record in your office of the examination of any company?

A. I did not.

Q. You are positive about that, are you?

A. If I did, I misunderstood the question. The records are full of examinations. Will you read me the question and answer of the—

Q. No, that is all right. In your direct examination you said, "We"—meaning yourself and Miss Ferguson—"have conducted all the work of the insurance department from 1903 until 1909"; that is true, isn't it?

A. Yes, sir.

Q. Then, what connection did Mr. Nichols have with the actual work of the department?

A. Mr. Nichols' connection with the office was to—as the insurance commissioner overlooking the work.

Q. How did he overlook it? Give some details.

A. He overlooked it by coming into the department, by having constant consultation with myself as to what I should do. The only active work that Mr. Nichols ever did in the department was in examining securities when we went to examine companies and in presiding over two trials, I think, held in the insurance department—one of the Mutual Reserve Life Insurance Company and the other with respect to some of the fire insurance companies.

Q. If Mr. Nichols gave this testimony relative to this matter before the investigating committee, was he or was he not mistaken: "Q. 'Did you give Mr. Schively control of the office?' A. 'Full control.'"

A. If Mr. Nichols made that assertion, he was mistaken.

Q. If Mr. Nichols made this assertion before the investigating committee, was he or was he not mistaken: "Q. 'Did you ever look over his correspondence'—meaning yours—to see what he was writing to these insurance companies?" A. 'No, sir.' Q. 'Never examined any of the letters that went out of the office.' A. 'Never in the world.'" If that testimony was given, was he or was he not mistaken?

A. If Mr. Nichols gave that testimony, Mr. Nichols was mistaken.

Q. In other words, he was mistaken in so far as his testimony conflicted with yours, wasn't he?

[No answer.]

Q. Now, Mr. Schively, you knew, did you not, as deputy insurance commissioner of this state, that you had the right to make such certain representations to all insurance companies and collect certain entrance fees?

A. Only under the consent of the head of the department.

Q. You knew, did you not, that you had the right to write these letters and receive these fees?

A. Only as deputy insurance commissioner.

Q. As the deputy insurance commissioner, did you or did you not receive fees?

A. I did.

Q. Did you or did you not grant certificates?

A. As the deputy insurance commissioner?

Q. Yes, sir.

A. With my own name alone, I never did.

Q. I don't care with your own name or not—representing the insurance department of this state?

A. I was representing Mr. Nichols in my signature.

Q. Were you representing Mr. Nichols or the insurance department of the state?

A. I was representing Mr. Nichols, the insurance commissioner of the State of Washington.

Q. As deputy insurance commissioner, did you or did you not make examination of insurance companies?

A. As deputy insurance commissioner, when ordered by Mr. Nichols, I did.

Q. Did you or did you not receive fees for those examinations?

A. I received examination fees, yes, sir.

Q. Were you or were you not familiar with the statute in September, 1908, when the Boston Insurance Company applied for admission, that the entrance fees for this state were \$35.00?

A. I knew that.

Q. Notwithstanding that, you still made the representation that entrance fees would be \$135.00?

A. I did not; I segregated.

Q. How it that?

A. I said the entrance fees would be \$135.00—statutory entrance fees \$35.00 and fees for examining the report or securities \$100.00.

Q. But you did use the expression, "the entrance fees are \$135.00," and then you repaired and explained?

A. And then I explained the language.

Q. But you knew, did you not, Mr. Schively, that they must have known that that was a condition precedent to their entering this state; you knew that unless they paid that amount of money, they could not get into the state, didn't you?

A. I knew that.

Q. Will you explain to the Senate why in some of your receipts you described the \$100.00 or the \$200.00, as the case might be, as "verification of report" and in others of your receipts you described "official examination"?

A. They are synonymous terms, practically.

Q. Then you just used them interchangeably for variety?

A. Not for variety.

Q. Well, for what reason?

A. They are practically synonymous terms; the first occurring to my mind I would use.

Q. Is this not a fact, Mr. Schively, that when you wrote these letters and demanded this money and received this money and gave a receipt for verification of report, you knew and you do know now that the verification of the report was complete at that time when they sent in their printed slip?

A. It was not.

Q. And you knew and know now that you never intended to make an examination of those companies?

A. I knew then and I know now that it has been my persistent intention to make those examinations.

Q. Then, I will ask you, if that was your persistent intention, why did you not deposit this money as a trust fund or in some other way segregate it and receive it to cover those examinations?

A. I looked upon that as being a matter between the department and the company.

Q. In which the state had no interest?

A. In which the state absolutely had no interest except to see as to the solvency of the company.

Q. Well, what do we know about solvency of the companies, Mr. Schively, when they have been admitted and are doing business here for three or four years and have not been examined? What does the state know about the solvency of the company?

A. You want me to answer that question?

Q. Yes, sir.

A. If any— There are thousands of ways.

Q. Well, give us a few of them.

A. Well, the report of the insurance commissioner of the state in which the company is operating; the report of the "Best Insurance Reports."

Q. If that is true, then, and you knew and know now that those companies are solvent, as evidenced by "Best's Insurance Reports," and the reports of the insurance departments, why did you not return their money?

A. Because these companies—all of these companies, sooner or later were to be examined, and are to be examined yet.

Q. And you are waiting until they become apparently insolvent in order to examine them?

A. No, sir.

Q. Is it not a fact that these companies from which you have received this money—a great many of them—are and always have been responsible companies and companies of integrity?

A. A great many of them.

Q. Including the Boston Insurance Company, capitalization paid of \$1,000,000.00?

A. The responsible companies, knowing that they would be examined, paid the money. All of them are responsible companies. The companies that are irresponsible failed to pay and are not in the state.

Q. Isn't it a fact that the companies from which you have received this money—a great many of them—are and always have been responsible companies, and companies of integrity?

A. A great many of them.

Q. Including the Boston company?

A. Including the Boston company.

Q. Then, if all the responsible companies paid the money and you had access to these official records, including Mr. Best's record, why was it necessary to exact an examination fee in advance of companies of unquestioned integrity?

A. It was the only possible way of raising a barrier, to which I have testified. I couldn't say to one company, "You are responsible and you needn't pay"; and to another, "You are not responsible and you must pay."

Q. Mr. Schively, you had no assurance that you would be re-elected



insurance commissioner of this state, so as to assume these duties in January, did you?

A. At what time?

Q. In the last year.

A. Preceding the election day?

Q. Yes?

A. No, sir.

Q. And you had no assurance that you would continue as deputy insurance commissioner?

A. No, sir.

Q. And yet you continued to collect in advance entrance fees from each and every company seeking admission to this state?

A. That was protected by the insurance department.

Q. Who was that?

A. Mr. Nichols.

Q. Mr. Nichols made these collections?

A. Yes, through myself.

Q. The checks were cashed by you?

A. Some of them cashed by me; and all of them stamped by Mr. Nichols, or the majority of them.

Q. And the money was spent?

A. Yes, sir.

Q. How were you going to turn that money over to your successor in office, who made these examinations?

A. Up to the time I was elected insurance commissioner, I felt satisfied that somehow or other this obligation would be discharged by the then insurance department. My intention has always been, since my election, that I would see to the fact that the obligation was discharged, and that wherein the matter of discharging that obligation was a personal expense to me, I would inform Mr. Nichols of that fact, and inform him of the fact that I expected him to remember that he had received this money and should pay his share of it. I have been most earnestly endeavoring to begin the discharge of this obligation that comes to my department from the preceding department and have been withheld from doing so by these legal trials.

Q. And your earnest efforts and your insistence to examine these companies dates from the legislative investigation of 1909, doesn't it?

A. No, sir, it does not.

Q. Up to that time had you any such intention?

A. It has been my intention from the receipt of the first cent of money under this line, as far as I had the power, to discharge that obligation and examine these companies.

Q. Do you mean to tell this Senate that money received by you as advance examination fees in the year 1905—that you have not found time in four years to examine that company?

A. I have not examined those companies.

Q. Would you have found time if you were so inclined?

A. I have not had the time to do it.

Q. Then state to this Senate why it was that you had time to spend in Portland as an expert, time to spend in Walla Walla as an expert, and time to go to conventions in Spokane, and to identify yourself with the Pacific Live Stock Association?

A. Because the disposition of the time of an employee is in the hands of the head of the department.

Q. It all goes back to the employee part, doesn't it?

A. Yes, it does; I couldn't go back east to examine these companies without the orders of Mr. Nichols.

Q. Have you told Mr. Nichols that you would like to examine them?

A. I have told Mr. Nichols repeatedly that that obligation ought to be discharged.

Q. And he has repeatedly told you that you must not do it?

A. He has told me that he would like to see it done.

Q. Then why was it not done?

A. He would not want me to go unless he went and it was not convenient for him to go.

Q. Let me ask you this, Mr. Schively: every time you turned around in the department did you have to receive orders from Mr. Sam Nichols to turn around?

A. I never did anything outside of sending out licenses in the insurance department that I did not consult the head.

Q. Do you not know it to be a fact that the advanced entrance fee paid by the Boston Insurance Company of \$135 went out over your signature as deputy insurance commissioner; that those letters went out over your signature as deputy insurance commissioner?

A. After having this conversation with General Atkinson, and this plan of a flat rate examination fee in advance was promulgated I suppose I told Mr. Nichols the character of letter that would be written, and he indorsed it. It wasn't necessary to take every letter that was in the form of a circular letter to Mr. Nichols to verify, and tell him of it.

Q. You still repeat that John Atkinson, attorney general of the state, told you at that time that you could collect from each and every company an advance entrance fee?

A. Examination fee. You used the word entrance fee.

Q. Well, they were advance entrance fees, weren't they?

A. No, sir, they were not.

Q. Didn't that fee have to be paid before the company could get into the state? Wasn't it an advance entrance fee?

A. In that sense they are.

BY MR. ISRAEL: I suggest that counsel doesn't argue with the witness.

BY MR. LEE: I will accept counsel's correction.

Q. Were you on July 31st, 1907, at the time you examined the affairs of the Washington Hardware & Implement Dealers' Mutual Fire Insurance Association, of Spokane, Washington, familiar with the law of the state which required that when the insurance commissioner or his deputy examined companies they should be allowed their necessary and actual traveling expenses?

A. Yes, sir.

Q. You did examine the companies of Mr. Evenson?

A. Yes, sir.

Q. Did not that examination consist in simply this: you talked over the affairs of the company with him, and you received from him a report of Mr. LeMaster; wasn't that substantially the extent of that examination?

A. Of the whole extent of the examination?

Q. Well, you testified on direct examination that you talked over the affairs of the company with him, his methods of bookkeeping, and received this report of Mr. LeMaster?

A. I had previously called on Mr. Evenson two or three times.

Q. That had nothing to do with the examination?

A. That had something to do in the time of the examination.

Q. I am referring to the actual examination. The major portion of that examination consisted in receiving a report from Mr. LeMaster, didn't it?

A. Yes.

Q. You knew that Mr. LeMaster was paid to do that work?

A. Only as I heard Mr. Evenson testify.

Q. You know you didn't pay him.

A. I know I did not.

Q. Then, you explain what the \$100 was received for, Mr. Schively?

A. It was received in keeping with the policy I have described here in charging a flat rate of \$200 per examination.

Q. That is your explanation to this Senate, is it, for demanding and receiving from E. W. Evenson the sum of \$100—because it was in accordance with the departmental policy?

A. I told Mr. Evenson the policy was to charge \$200 for examining companies in Spokane, but as I was at that time examining another company—

Q. What other company?

A. I don't remember the company now, but I told him I was examining another company and I would therefore only charge him \$100, as I was to split the difference between the two.

Q. What items went to make up that \$100?

A. The items—What is your question?

Q. What items of expense were disbursed in that examination?

A. I don't know.

Q. Do you know whether any were or not?

A. I do.

Q. What?

A. Railroad fare and car fare and necessary expenses.

Q. How long were you there?

A. I don't remember.

Q. According to your testimony, you didn't spend over half a day in Evenson's office, did you?

A. Not in his office.

Q. Probably less?

A. Perhaps less.

Q. And how much time did you spend in the office of this other company?

A. I don't remember the company, and so I don't know.

Q. Do you remember whether there was another company?

A. There must have been, or there wouldn't have been any reduction.

Q. That is your only conclusion, then, is it, the fact that there was a reduction?

A. Yes.

Q. Then I want you to explain to this Senate if you charged \$200, what your expenses would have been to have made that up?

A. I didn't put the charge on the basis of an itemized expense account.

Q. In other words, you didn't follow the law, did you?

A. I think I did follow the law.

Q. Why, Mr. Schively, don't you know that the law is and was at that time that when the insurance commissioner or his deputy re-

paired to the office of an insurance company to make an examination, that after the examination—perhaps not in that exact language, “after the examination”—but that the insurance commissioner or his deputy should be reimbursed upon a detailed statement of his expense involved, meaning an actual expense, or, to give it a latitude that Mr. Israel contends for, liberal expense; in that event, did you not and do you not understand that that law was mandatory?

A. I know that it depends upon the interpretation of the law.

Q. And you interpreted it to charge them whatever the traffic would bear?

A. No, sir, I did not.

Q. You interpreted it to charge them \$200 flat rate?

A. Yes, sir.

Q. Notwithstanding the fact that your expenses were only \$75?

A. Whatever the expenses were, that was the charge.

Q. What are your traveling expenses a day?

A. I don't know.

Q. Can you approximate?

A. Not always. Traveling expenses for myself under certain conditions—

Q. As deputy insurance commissioner in making an examination?

A. Yes, in making an examination under certain conditions it would be very small, and under other conditions it would be very large.

Q. Well, just a medium?

A. The medium, I think, the general traveling expense—

Q. Outside of transportation.

A. I am going to give you the two. Including the traveling expenses of transportation and incidentals for a day would be somewhere in the vicinity of \$20; and with the incidental expense of a day would be from \$12 to \$20.

Q. Now let us take a suppositious case. Suppose you lived in Olympia, and go to Spokane to examine two companies. Suppose your time in going is one day. Suppose you spend two days there. Suppose you return to Olympia. Assuming that the transportation both ways, including a sleeper and meals on the train, is approximately \$40 or \$45. Then I want you to state how you get an expense of \$15 to \$20 a day.

A. \$15 or \$20 a day in Spokane to spend?

Q. Exactly?

A. In the easiest manner possible, and then need some more.

Q. And that \$15 or \$20 a day included the purchase of cigars and champagne, didn't it?

A. It included the purchase of cigars and champagne, if we wanted it.

Q. And that had to be charged up against the company's examination?

A. Very frequently the company was there to help out in the matter.

Q. In any event, when this flat examination fee of \$200 was made, those expenses were always included, weren't they?

A. Yes.

Q. That is your interpretation of the statute governing the deputy insurance commissioner of this state, was it?

A. What is that question?

[Question repeated by stenographer.]

A. That was the interpretation of that law with respect to necessary and actual expenses.

Q. Did Mr. Nichols have anything to do in the interpretation of this statute, too?

A. Now, you understand—

Q. Well, you understand the question?

A. I want the question to be thoroughly clear that you are not leading me into confusion.

Q. Well, Mr. Schively, I would not lead you into anything. I am here to get the facts.

A. I am stating and have constantly stated that these charges to these companies were on a flat basis.

By MR. LEE: Read the question, Mr. Stenographer.

[*Stenographer reads the question.*]

A. I am not testifying—

Q. Do you understand the question or do you not, Mr. Schively?

A. I am not up to that by a good deal yet. Mr. Lee, will you let me say a word to you?

Q. If it has any possible bearing on this question.

A. It has a bearing on the carefulness that I am making in this distinction with you. When General Atkinson was on the stand before the investigating committee, you put words into my mouth in speaking of General Atkinson that weren't there, and I am now being very careful with you.

By MR. LEE: Well, as far as that goes, Mr. President, I think that may be stricken. Counsel knows that I have been fair all through this matter, and so does this witness. Mr.—

By THE PRESIDING OFFICER: The answer may be stricken.

By MR. LEE: Mr. Reporter, you may read the question.

[*Question read.*]

A. Well, it is impossible to answer that question without seeing whether I have been confused in my answers.

Q. Well, to clear you up, Mr. Schively, just to show you that I was not trying to trap you, you stated that your construction of the statute governing the collection of examination fees was that you could reasonably and legitimately buy these things and charge them up to the insurance company, especially so since the companies very frequently indulged themselves; now you stated that was your construction, and I want to know if Mr. Nichols placed that construction on it personally or authorized you to place that construction on it?

A. I first want to be understood as saying that that was not the manner in which we charged these companies for these examinations.

Q. Charged the flat rate?

A. Charged the flat rate. Now, when the question of examination should come up, then I answer you directly that that would be the interpretation.

Q. Do you know whether or not the Boston Insurance Company or the insurance company referred to in article 4, or any of the insurance companies mentioned in the depositions in evidence here, have withdrawn from this state?

A. Some have—those mentioned in the depositions, you say?

Q. Yes?

A. I don't know whether it refers—

Q. Will you examine this pamphlet and state whether or not the

Capital Life Insurance Company, of Denver, Colorado, and the Illinois National Fire Insurance Company have withdrawn from this state?

A. The Capital Life has withdrawn and the Illinois National Fire Insurance Company has withdrawn.

Q. There are depositions in evidence here that state that you demanded and received from them \$200 as an examination fee. If they have withdrawn from the state, and you never made the examination, have you refunded the money?

A. I have not.

Q. Why not?

A. It has never been requested for me to return it.

Q. Does it have to be suggested to you, after you have collected from a company a fee for an examination and after the company has withdrawn from the state, that it is necessary for you to refund the money?

A. That was controlled by the insurance department, of which I was not the head.

Q. How about your part of it; didn't you receive half of that money?

A. I received half of that money.

Q. Didn't you write the letter admitting them?

A. I think I did.

Q. Didn't you grant them certificates of authority?

A. I think I did— No, sir; I wrote the certificates of authority, with the name of Mr. Nichols on, attested by my name.

Q. Equivalent to the same thing, isn't it?

A. I don't think it is. It admitted them to do business in this state.

Q. The name was the name of Mr. Nichols that admitted them, was it?

A. Yes.

Q. Subscribed to by yourself?

A. Yes, sir.

Q. Then, you have \$400, so far as the evidence in this case shows from two companies in this state that have never been examined, and you have spent the money. That is correct?

A. That is correct.

Q. Was that your usual practice, Mr. Schively, or was it as deputy insurance commissioner?

A. It was the usual practice to collect this money in advance.

Q. Was it the usual practice to collect money in advance and when the companies had withdrawn from the state to keep that money because they hadn't asked for a refund?

A. If the company withdrew, they have not received that money.

Q. And your interpretation of that statute was that they weren't entitled to it?

A. The facts are the interpretation.

Q. How much money have you got on hand which has been extracted from insurance companies for examinations and the companies have withdrawn from the state with no examination made?

A. I haven't got any.

Q. How much have you spent?

A. I don't know.

Q. Can you approximate it?

A. I cannot.

Q. How much money do you think was left over above your actual

and necessary expenses out of the \$100 received from Mr. E. W. Evenson?

A. I don't know.

Q. Can you approximate it?

A. I cannot.

Q. Are you willing to state that there was or was not any?

A. I am not willing to state that there was or was not any.

Q. If there was any, are you willing to state what became of it?

A. I don't know what became of it, except that all moneys received by me were reported to Mr. Nichols.

Q. Didn't you state before the investigating committee of this state, on or about the 16th day of April, 1909, that when you made examination charges and had money left over and above your examination expenses, it was spent in any way that happened to occur to you?

A. What was left over was divided between Mr. Nichols and myself. I can't remember every statement I made there.

Q. Mr. Schively, I will call your attention to this testimony, given by yourself before the investigating committee, or alleged to have been given, and ask you whether or not you made this statement. Going back now a question or two, in order not to confuse the issue: "A. 'If Mr. Evenson had said to me, 'Here is the law, why don't you make an itemized list of this, then I should certainly have given it to him.' Q. 'Was it not your duty to do that, Mr. Schively, without any request from Mr. Evenson, acting under the law?' A. 'I did not so understand it.' Q. You were familiar with the law, were you not?' A. 'I didn't so interpret the law.' Q. 'How many days were you in Spokane on this trip?' A. 'And I didn't so interpret it because there was no record of the department that I could find of preceding administrations that left that sort of an interpretation.' Q. 'Were you relying upon the interpretations of previous administrations or were you relying on the law of the state?' A. 'I was relying on the statutes and likewise relying on previous interpretations. Now, I didn't mean to say previous administrations in this way, because I don't know anything about that. I never talked with any of those men.' Q. 'You don't know how long this examination consumed?' A. 'No, I do not. I have no idea how long it was.' Q. 'You could have got more than your expenses or less than your expenses?' A. 'Yes.' Q. 'Which do you think it was—more or less than your actual expenses?' A. 'I think it would be a quibble for me to answer that by saying I might have gotten less, because I want to say frankly to the committee that I did not get less.' Q. 'In no case did you get less?' A. 'In no case in this state did I get less.' Q. 'You always put it high enough to cover your expenses?' A. 'Yes, sir.' Q. 'What was done with the balance?' A. 'The balance was spent any way that happened to occur to me.'" Did you or did you not give that testimony?

A. That sounds as though I had given it.

Q. You are reasonably sure that you did?

A. Reasonably sure that I gave that testimony

By MR. LEE: Now, if the court please I desire to take up another article, and I think we had better adjourn at this time.

By THE PRESIDING OFFICER: We will adjourn at this time until tomorrow morning.

By SENATOR FALCONER: I would like to make a motion that after today we hold evening sessions, from 7:30 to 9:30.

By MR. ISRAEL: Now, I desire to object to that. It is not fair. I am alone in this defense, and I am introducing witnesses in this defense,

and before I can introduce witnesses intelligently I have to find out what they know, and what they don't know, and the only time I have to do that is in the evening. If you take my evenings away from me, I have got to do it after every one else has gone to bed. It isn't fair.

BY SENATOR FALCONER: Well, I understood that Mr. Israel was not opposed to it after today. If counsel for respondent objects to it, I will withdraw the motion.

BY THE PRESIDING OFFICER: The motion is withdrawn.

At 5 o'clock p. m., the Senate, sitting as a court of impeachment, adjourned until 9:30 tomorrow morning.

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SENATE CHAMBER,  
OLYMPIA, WASH., August 24, 1909.

The Senate, sitting as a court of impeachment, convened at 9:30 a. m., all members being present except Senators Cox, Graves and Nichols, excused.

BY THE PRESIDENT: The senator from Klickitat, Senator Presby, will take the chair.

BY SENATOR POTTS: Just a moment, Mr. President, I have a resolution to offer this morning.

BY THE PRESIDENT: The senator will have to have unanimous consent to introduce a resolution at this time.

[*Unanimous consent.*]

BY THE PRESIDENT: The secretary will read the resolution.

BY THE SECRETARY: Resolution by Senators Arrasmith and Williams: "*Resolved by the Senate*, That Senator George U. Piper shall not be permitted in the galleries of this Senate chamber during the session of this court; upon failure upon the part of said senator to comply with this resolution, he shall be fined not less than five dollars nor more than twenty-five dollars."

BY SENATOR WILLIAMS: I move the adoption of the resolution.

[*Motion duly seconded.*]

BY SENATOR PIPER: Of course, I am a little sore about this resolution being introduced at this time, but I would like to know, if I pay the fine, may I move up there? If so, I promise I shall go to the gallery as often as I choose.

[*Whereupon the president put the motion, calling for the ayes and nays.*]

BY THE PRESIDENT: The resolution is carried.

[*Senator Presby assumes the chair.*]

BY THE PRESIDING OFFICER: Mr. Schively, you will resume the witness stand.

[*Mr. Schively on the witness stand.*]



*Cross-Examination (Continued)*—

BY MR. LEE: Q. Mr. Schively, yesterday, when we closed we were leaving the direct examination on article 17, relating to the examination of the Washington Hardware & Implement Dealers' Mutual Fire Insurance Association, of Spokane, Washington. I will ask you now, in that connection, whether or not when you examined that association in Spokane and received one hundred dollars from Mr. Evenson, whether you then were on a fifteen or twenty-dollar-a-day expense basis?

A. I was not.

Q. What expense basis were you on when you made that charge?

A. I was on the flat rate basis of two hundred dollars a company in Spokane, with a prorating if other companies were examined.

Q. Did or did not that \$15 or \$20 a day include actual living and traveling expenses?

A. That did not include the items of expense at all.

Q. Must it not necessarily have included the item of expense?

A. It did not.

Q. Then tell this Senate what it included in the examination, if it did not include expense.

A. Because I charged it on the policy of the department to charge a flat rate of two hundred dollars.

Q. That is not an answer to the question. Will you tell this Senate if that two-hundred-dollar flat rate did not include any items of expense, as you have just said, what did it include?

A. It included the cost of examination of the company, which was placed at a flat rate of two hundred dollars.

Q. What did the cost of the examination of the company include?

A. Every cost of the examination?

Q. What was the cost of the examination?

A. Whatever might arise.

Q. What might arise?

A. Time, expense, work.

Q. As a matter of fact, expenses were a large portion of the cost of examination—actual expenses incurred?

A. The fact that the cost of the examination was placed on a flat-rate basis of two hundred dollars. This flat-rate basis was arrived at as a departmental ruling a year before the—in the vicinity of a year (it is impossible to be exact as to days or months in that respect)—a year before this company was examined.

BY MR. LEE: Read the question.

[*Question read.*]

A. Certainly.

Q. Then what do you mean by telling this Senate a moment ago that in arriving at this flat rate expenses were not considered and were not a legitimate part of the rate?

A. I mean to say to this Senate that the policy was adopted of charging—

Q. I don't care anything about what policy was adopted. In order to make myself intelligible, I must ask you again if in this charge you made to Mr. Evenson of one hundred dollars you did or did not include a fifteen or twenty-dollar-a-day traveling expense?

A. Now, in that examination of that company the matter of expense was not included, because it had been settled as a stated policy that examinations would be two hundred dollars.

Q. Then, if the matter of expenses was not included, what did the one-hundred-dollar charge cover?

A. It covered the cost of expense as interpreted by the department in fixing this flat rate, before that examination was made.

Q. In other words, Mr. Schively, you reason in a circle and finally come around to the proposition that, this one hundred dollars did cover expenses incurred in that examination? If it did not cover expenses, what else did it cover?

A. In determining upon the costs or actions to be taken in the future, you include everything that is to be done. The law makes a certain statement; the law itself is made—

Q. What is that statement?

A. The basis of the law that governed that decision was that companies without a reserve should be charged a maximum of two hundred dollars.

Q. Now, you know you are referring to fraternal companies?

A. I do.

Q. You know you have been trying to bring into this testimony, in direct and cross-examination, the minimum in fraternal. What has that to do with this Evenson incident? Was that a fraternal organization?

A. That was the basis upon which the policy of the department was made.

Q. What expenses, if any, were incurred in that examination made of Mr. Evenson's company, and if so, did you figure the expense on the basis of \$15 or \$20 a day?

A. I do not—I did not know what the expenses were, and any way in that examination I did not figure expenses.

Q. What did you figure, then, if you did not figure expenses?

A. I figured on a flat rate of two hundred dollars in the examination of companies.

Q. So, if you were not put to a dollar of expense, you would charge two hundred dollars?

A. If I was not put to a dollar of expense.

Q. It is your interpretation of the law that when the company is examined the company would have to pay the actual and necessary traveling expenses?

A. That was not my interpretation.

Q. Well, did you know that law was on the statute books?

A. I knew the laws on the statute books.

Q. Either one of two constructions must have been given—either you did include this in the charge for examination or you did not.

A. That instruction was given to me as the policy of the department, by the head of the department.

Q. What did you do with the \$200 when you collected it?

A. I did not collect \$200 from that company.

Q. I thought you said a moment ago you prorated this charge.

A. I charged this company one hundred dollars and another company one hundred dollars.

Q. Then, if you were not put to the expense of one hundred dollars, what did you do with the one hundred dollars?

A. It is impossible to go to Spokane without expense.

Q. Then, you refute your testimony of a moment ago. There must have been some expense on that trip.

A. I do not refute that testimony.

By MR. ISRAEL: I object to this; this has gone far enough. It is mere badgering of the witness and not cross-examination.

By MR. LEE: I understand counsel is objecting—

By THE PRESIDING OFFICER: I want to allow you all the latitude in the world, but I think you have gone over this already the second time.

By MR. LEE: All right, I will proceed on another line.

Q. Now, you have stated to the Senate, on direct examination and at various other times, you were acting under the advice, direction and supervision of your superior officer. If you were such a servant, why did you not turn over all fees to your superior officer instead of keeping half of them?

A. The fees were turned over to him.

Q. They were all turned over to him?

A. They were not turned over to him in actual cash, and he handing it back to me. I reported to him the money I had.

Q. And you kept it?

A. I kept it.

Q. Why did you keep it if you were acting under his instruction as a mere employee of the insurance commissioner?

A. Because he told me so to do, because when examinations of a company were to be made we were each to pay our individual expenses out of this.

Q. In fact, you turned over half and you kept half, and from that it would seem that there were two principals in the insurance commissioner's department instead of one?

By MR. ISRAEL: I object to that. That is a matter of argument.

By THE PRESIDING OFFICER: Yes.

Q. In that connection, how much of the money was left over from the \$100 received from Mr. Evenson?

A. I have no idea.

Q. Would you say there was a dollar of it?

A. I do not remember.

Q. Do you remember whether you gave a detailed statement of your expenses?

A. I do not remember in regard to that particular item.

Q. Would you say you ever gave a detailed statement of expense?

A. To whom?

Q. To Mr. Evenson's company or any other company you may have examined?

A. I gave what was the equivalent, in my estimation, of a detailed statement to Mr. Evenson.

Q. In other words, the flat rate?

A. Yes.

Q. It was your construction of that law, then, that the flat rate was the equivalent to a detailed statement?

A. All I now remember of the transaction was— The definite part of the transaction was between the company and the examiner. When the examiner stated his sum to the company, if the company had any protest to make, it would make it. If it had no protest, it would pay the money, the company being the one to know whether the charge was exorbitant or not, or proper.

Q. You made an examination of another company at that time, although you do not remember the name?

A. Yes.

Q. Do you remember what you charged the other company?

A. I must have charged the other company one hundred dollars.

Q. Do you know you charged them more or less?

A. I know I could not have charged them any more.

Q. You know you could not—you would not have charged more than one hundred dollars?

A. Yes

Q. Assuming, and giving you the benefit of the doubt, you charged one hundred dollars each for two companies, making two companies in Spokane, consuming on the basis of this Evenson incident a period of four days, taking one day to go and one day to return and two days to Spokane, will you explain how you came to an expense of \$200 in examining these companies?

A. In order to make an answer to that question—

By MR. ISRAEL: I am going to interpose an objection. Witness has not stated, or attempted to state or claim that he spent \$200 in making the examination. It is putting words into his mouth that he did not utter for the purpose of quarrelling and arguing with him. He stated to counsel that he charged \$200, irrespective of what the expenses were.

By THE PRESIDING OFFICER: The objection will be overruled.

Q. You state you charged Mr. Evenson \$100 and probably charged another company \$100 in these two examinations at the same time. Now, inasmuch as you say you were familiar with the law that only actual and necessary traveling expenses could be collected, will you recite to the Senate what, if anything, there was left, over your actual and necessary traveling expenses, out of that \$200?

A. In fixing this basis on a rate of \$200, the law specially stated that the department was limited in the examination of a fraternal company, and the fraternal company law was applied to these without a limitation of \$200—was placed upon the department. That meant that if the department was going to examine a company in New York or Iowa or Texas, it could not charge that company more than \$200. This must necessarily be at a loss to the examiner. In estimating the entire proposition, so that the examiners would not meet with any loss, that flat rate of \$200 was established universally, so that if there was any profit in an examination in Spokane it would be more than lost or at least would be met by a visit to New York or Iowa or some other place. We were establishing a policy that was to cover all of these matters. Now, that is as plain as I can make it.

Q. How many visits did you make to New York and other places?

A. I cannot say.

Q. Do you know that only one such visit was made in the year 1905?

A. Mr. Nichols sent his son with me in 1901. In 1902, I think, Mr. Nichols went with me. Mr. Nichols and myself went two or three or four times back east. Mr. Nichols' son was sent with me once. Mr. Nichols took Mr. Niles with him once or twice. He sent Mr. Niles and Mr. Hickey once, when I was not sent, and I think I sent Mr. Niles once myself, and the entire transaction on all these was based on the stated sum fixed in the fraternal law.

Q. That \$200 basis?

A. On the basis of the law.

Q. In other words, the \$200 charge was made during your entire administration as deputy insurance commissioner?

A. In the first visit I made, I testified before, and I now repeat—

in the first visit we prorated this matter, and in our prorating the expense we discovered the average cost was \$200; then, after this conversation with Attorney General Atkinson, when we came to put it on a flat basis, here was the statement of the law on the one side, and enforcing it, or indorsing it, or bearing it out, was the experience we had in prorating these companies.

BY MR. ISRAEL: I submit that is an answer.

BY MR. LEE: Q. It is not an answer. You have stated that on these trips east Mr. Nichols sent his son on one of them; that you prorated them—I want to know how you arrived at the \$200 basis in 1901?

A. In 1901 when we were back there and found out what our expenses were we charged the pro rata expenses.

Q. Did you or did you not arrive at a \$200 basis in 1901?

A. We arrived at that basis after our experience in 1901.

Q. When did you arrive at that basis?

A. Some time after our return from that visit.

Q. How long after that?

A. After that visit, Mr. Nichols' son and myself were personally out of pocket.

Q. I don't care about your being out of pocket. How long after that visit did you arrive at this flat rate of \$200?

A. We did not arrive at the flat rate of \$200. We arrived at the prorating expense of \$200—we arrived at the flat rate of \$200 in our conduct up to 1905 as the result of that experience writing companies to what would be the general cost of an examination.

Q. All right. We will pass to article 19. On the 12th day of June, 1906, you made an examination of the Farmers' Mutual Live Stock Insurance Company, of Spokane, Washington.

A. On what date?

Q. On the 12th day of June, 1906. You got one hundred dollars. What other company did you examine while in Spokane?

A. I do not remember.

Q. Do not know whether or not you examined any?

A. If the charge for that company was only one hundred dollars, there must have been more than that company.

Q. Suppose there had been more than two companies, would you have charged each one hundred dollars?

A. We would prorate between the companies.

Q. Did you ever charge any companies in Spokane on the basis of \$50 a day?

A. I think I did—\$50 a day.

Q. \$50 a day?

A. The examination fee of the Falls City Fire Insurance Company was \$50. That included the expenses of the entire trip.

Q. Will you say how long you were in making this examination of Mr. Ligget's company?

A. I do not remember.

Q. Approximate the time.

A. I imagine I was there with the company off and on for fully a day, if not two days.

Q. Have you presented any detailed list—did you present any detailed list to the company at that time, before you were paid?

A. I presented to the company what I have exhibited as a detailed list of expenses, but what I mean as a detailed list of expenses naturally did cover the cost of examination.

Q. On this date you also were familiar with the law which governed yourself and Mr. Nichols?

A. I was.

Q. What was your construction of the law?

BY MR. ISRAEL: You have been all over that.

BY MR. LEE: This is an independent issue, your honor. I have the right to cross-examine on this.

BY THE PRESIDING OFFICER: Go ahead and answer.

Q. You did not make any detailed list of expenses at this time?

A. I gave to the company a voucher covering the cost of examination.

Q. Was that your construction of the law?

A. That was placing there the cost of examination based on that flat-rate basis.

Q. Now, on a subsequent date, and on October 9th, 1906, you assisted the Idaho insurance commissioner?

A. I did.

Q. You were then acting as deputy insurance commissioner, or were you acting as an insurance expert?

A. I was acting as deputy insurance commissioner, and as the friend of the company, it being a Washington company, in watching its interests in its desire to enter the State of Idaho.

Q. Did you receive any compensation from Mr. Ligget?

A. I did.

Q. How much?

A. I do not remember.

Q. You do not remember?

A. I do not.

Q. Can you approximate it?

A. I do not remember what Mr. Ligget gave me.

Q. Was it more or less than one hundred dollars?

A. I do not remember.

Q. As a matter of fact, don't you know you got just one-half of that three-hundred-dollar charge?

A. As a matter of fact, I don't know what Mr. Ligget gave me.

Q. If he gave you anything, did he give it to you as deputy insurance commissioner or as an expert?

A. He gave it to me for the work that was done there—for my being there and giving my assistance both to him and the company.

Q. How much time did it take?

A. I do not remember.

Q. Can you approximate it?

A. Probably a day.

Q. You were not so busy but what you could give your services there to Mr. Ligget.

A. I had concluded with the Pacific Live Stock Association and was on my way home and stopped over to aid in this work at the request of the company.

Q. On April 16th, 1907, you testified in your direct examination you examined the records and securities of the Walla Walla Fire Insurance Company?

BY MR. ISRAEL: What article is that?

BY MR. LEE: Article 20.

Q. You received, did you not, a fee of \$200?

A. What date is this?

Q. April 16th, 1907. Did you examine the Walla Walla Fire Insurance Company?

A. Yes, sir.

Q. Did you make any detailed list of expenses at that time?

A. I gave the usual voucher to the company.

Q. You gave the usual voucher, the usual flat-rate basis?

A. Yes, sir.

Q. Do you know what your expenses were on that trip?

A. I do not.

Q. Did you call in any other expert assistants to help you make that examination?

A. I did not.

Q. Then you were confined in your expenses to traveling and living expenses on that trip?

A. I was.

Q. How long were you there?

A. I do not now remember.

Q. Can you approximate it?

A. Not over two days, or three at the most.

Q. In all probability there was a hundred dollars or so left over from this examination?

A. I do not remember.

Q. Assuming that there was, what did you do with the balance?

A. I reported the transaction to the secretary of state, because he was insurance commissioner.

Q. Did you divide the balance with Sam this time?

A. I reported the transaction to Mr. Nichols.

Q. What did he say when you reported the transaction to him? Did you go in and say, "Nichols, I made an examination on the flat rate of two hundred dollars, and I have one hundred dollars left." Was that your report?

A. If that was the case, I would have so reported it. Whatever was the case, I reported it.

Q. Whatever was left you divided?

A. Yes, whatever was left we divided.

Q. Tell the Senate why you did not turn it back—back to that company?

By MR. ISRAEL: He has been telling the Senate for two days that he did not—

By MR. LEE: This witness has stated that he was familiar with the law; but in order to avoid quibble I will withdraw the question.

By THE PRESIDING OFFICER: I think the Senate comprehends the position.

By MR. ISRAEL: I will state now to counsel we are not explaining—

By MR. LEE: I object to any discussion.

By MR. ISRAEL: All right; I won't even make the admission.

Q. Now, Mr. Schively, on a subsequent date and about four months later, on July 27th, 1907, you made another examination. Do you know what you charged for the second examination?

A. I did not make any charge whatever. At the conclusion of

the work, Mr. Holloway, the president of the company, came and handed me a check for \$200.00.

Q. In that subsequent examination, were you acting as deputy insurance commissioner or as insurance expert?

A. The Walla Walla Fire Insurance Company was desirous of entering a number of other states. It would require certain certificates from the department.

Q. Now, Mr. Schively, will you try and answer my question?

A. I am endeavoring the best I can to answer that question.

BY THE PRESIDING OFFICER: Let him go on.

A. It would require certain certificates from the insurance department as the insurance department. It required certain expert knowledge that it did not have in its office with respect to the different rates of reinsurance reserve. It wanted the insurance department both as the insurance department and it wanted the knowledge that the deputy insurance commissioner had concerning these matters; it wanted his help in making out reports to send to these other states that it was desirous of entering. Mr. Holloway wrote and asked if I would come over and give him this information and perform the official work at the same time. It was looked upon by myself as being both official and helpful on the part of the department. I went over there and did the work that was required, and, without the mention of costs or anything else, Mr. Holloway handed me a check for \$200.00 and that closed the incident.

Q. Did you receive that \$200.00 in your official or your personal capacity?

A. I received the \$200.00, if it is possible for you to understand it, in the double capacity, but I reported it as I say to Mr. Nichols.

Q. Did he get any of that money?

A. If there was any left, he did. If there was not, he did not.

Q. How long were you there in that examination?

A. I do not remember—a day or so.

Q. So, if you were as an expert, you were neglecting your duties as deputy insurance commissioner, were you not?

A. No, sir.

Q. Then you must have been there as deputy insurance commissioner in making that examination?

A. Not necessarily. In looking after the interests of the companies of the State of Washington I can act both in an official and personal capacity.

Q. Now, Mr. Schively, in connection with article 21, there is some more expert service and assistance that you rendered Mr. Wagnon, of Portland. How much did you charge for that, do you remember?

A. \$200.00.

Q. Did you divide that with Mr. Nichols?

A. Whenever there was an income that was personal, every time it was reported to Mr. Nichols. If there was anything left, Mr. Nichols received his share and I mine, because if future examinations were to be made, that would be a personal loss; this profit, if there was one, would meet that personal loss and the whole field of operations would be covered. Now, that is as plain as I can make it.

Q. Now, Mr. Schively, I omitted one article here, before passing to article 22. You charged Mr. Philip Harding \$200.00 for examining the Western Union Life Insurance Company, of Spokane, on or about December 12th, 1906, did you not?

A. I suppose so; I don't remember the dates.



Q. Do you know whether you did or not?

A. I know that I examined the company; just what date, I am not certain.

Q. Do you know what amount, if any, you got?

A. \$200.00.

Q. Well, you are sure about that, are you not?

A. I am sure of that, if the Western Union Life was examined alone. If there were other companies examined at that time, then it was otherwise.

Q. Do you remember stating to Mr. Harding that your usual charge was \$50 a day, and inasmuch as it took a day to go and a day to return and two days there, it would be four times \$50 or \$200.00?

A. It covers the general proposition with Mr. Harding. I have gone over this—the charging of a flat rate of \$200.00—and then I may have said to him something of that nature; that even at \$50.00 a day, that would not be an expensive cost, for we had estimated that it would be four days in the transaction.

Q. That was on the flat basis of \$200.00 that you arrived at because of this so-called departmental policy, was it?

A. Yes, sir.

Q. Did you present any statement of expenses to Mr. Harding at that time?

A. I gave to Mr. Harding a voucher.

Q. And that was all?

A. Yes, sir.

Q. In May, 1908, you made another examination and charged him \$35.00. Why was it that you charged him \$200.00 in one case and \$35.00 in another?

A. My memory of that transaction is this: that I was in Spokane for some other purpose. I think that the Republican state convention was meeting in Spokane at that time. If that is not the occasion demanding my presence, there was some other reason for which I was there in an entirely and absolutely personal nature. I met Mr. Harding on the street and he told me that they were about to enter Montana and that there was to be a meeting of the commissioners of Montana or Idaho or something—it is impossible to detail the actual conversation—but that for some reason that examination of the other departments was not to be held, but that he had had a statement, prepared by some expert accountants in Spokane, and he wanted me to verify their statement, so that if the matter should come before the department at any subsequent time the verification or the certification could be made. I went up to the office of the company and did the work that he requested me to do, and he said, "What is the cost of this?" And I said to him, "Mr. Harding, I am here on personal matters, and will not charge you anything for this." I had previously given them an examination for \$200.00, and Mr. Harding said to me words to this effect, that I had been doing this at his request, and that his company was not in the habit of making people work for them and giving them nothing. And he said, "I want to give you something for this. Will \$35.00 cover it?" I said, "\$35.00 will certainly cover it, since I did not care for anything." And he gave me the check for \$35.00. That is, to the best of my knowledge, the occurrence.

Q. But you do not swear that you did not demand this of him first, did you?

A. I am perfectly willing, so far as my memory goes, to absolutely swear that I did not demand that of him first.

Q. Then, if his testimony was to this effect, he must be mistaken?

By Mr. ISRAEL: That is a matter of record, your honor, what that witness testified.

By Mr. LEE: Well, counsel has adopted that mode of argument all through this trial.

By Mr. ISRAEL: You never heard me ask a question of that kind in my life.

By Mr. LEE: We will withdraw the question to avoid difficulty.

Q. Now, Mr. Schively, you examined the company with which Mr. Tebbins is connected and charged him \$50.00, didn't you?

A. Yes, sir.

Q. Did you present him with a list of detailed expenses?

A. I presented the usual voucher.

Q. You knew the law at that time, did you not, that the insurance commissioner or his deputy was required to make the statement of expenses of the examination?

By Mr. ISRAEL: We admit that he did.

By Mr. LEE: I want him to answer.

A. I knew that law.

Q. Now, in connection with article 23, you testified that Mr. Best came to your office and made some objection about the representations that had been made to the Atlas Insurance Company, of Des Moines, and thereupon you stated to him that inasmuch as he was connected with the publication of the Best manual, either directly or indirectly, and was an expert in the insurance world, on account of his opinion, you would let his company in for \$35; that, subsequently, was done, wasn't it, Mr. Schively?

A. No, that is not it; it was subsequently done, Mr. Lee, but I do not remember to have ever had any conversation with Mr. Best as to the Atlas Insurance company.

Q. Yes, though subsequently, a number of companies with which Mr. Best was identified.

A. And especially the North Coast Fire, I think. The conversation was substantially the same.

Q. Did you go to see Mr. Nichols about that or did you tell him that you would reduce the charge yourself?

A. We had already covered that proposition with Mr. Nichols. The original idea of placing this \$200 fee was to keep out companies that were shown up as wildcats or experiments or something of that kind.

Q. Well, now, we have gone over that. I don't care for a recital of that. I don't care to interrupt you except to come back to the question: Did you or did you not, after this conversation with Mr. Best, go to Mr. Nichols and tell him about the reduction?

A. With respect to this individual company?

Q. Exactly, or certain other companies with which Mr. Best was identified?

A. That was not necessary. Mr. Nichols—

Q. I don't care what is necessary. Did you or did you not go to Mr. Nichols?

By THE PRESIDING OFFICER: Answer the question.

A. As to that individual case, I do not remember.

Q. So if you did make this reduction, it was on your own responsibility at that time, as deputy insurance commissioner, wasn't it?

A. It was on my own understanding of what Mr. Nichols required.

Q. All the time goes back to Mr. Nichols, doesn't it?

A. I never did anything in the department without consulting Mr. Nichols.

Q. What right had you, as deputy insurance commissioner of the State of Washington, to make any graduated charges of \$35.00 to one company, \$135.00 to another and \$235.00 to another?

A. Because it was all consistent with the plan as outlined and with the orders as given.

Q. It was all consistent with the departmental policy?

A. It was all consistent with the departmental policy.

Q. The Atlas Insurance Company has since entered the State of Washington—recently—hasn't it?

A. It has.

Q. Do you know what entrance fee, if any, it paid?

A. \$35.00.

Q. Why didn't it pay \$235.00?

A. Because the Atlas Insurance Company entered under the present administration, and the policy of the present administration is to go and examine the companies as rapidly as possible, the legislature having given an examiner for that very purpose.

Q. Now, Mr. Schively, after the Atlas Insurance Company had been entered by Mr. Best, at the time of your conversation with Mr. Best, it would have been entered for \$35.00, wouldn't it?

A. It would, if in that conversation Mr. Best and myself discussed the Atlas.

Q. So there would not have been any difficulty between that administration and this one over that company if it had been entered at that time, would there?

A. There would have been a difference in the operation, if Mr. Best figured in the application.

Q. Now, Mr. Schively, one or two questions before concluding: You were extremely busy in 1904, 1905 and 1906, so that these examinations could not be made, weren't you?

A. In 1905, 1906 and 1907.

Q. I will ask you if about that time you spent six weeks or so campaigning outside of the State of Washington?

A. I did not.

Q. Have you spent any time since 1904 outside of the State of Washington campaigning?

A. Since 1904, not to the best of my knowledge.

Q. Before 1904 and since your connection with the department, as deputy insurance commissioner?

A. Before 1905 I campaigned frequently in the east.

Q. In what year since you have been deputy?

A. Since I have been deputy, up to and including 1904. Not since 1904, to the best of my knowledge, when the increased work of the department prevented me.

Q. How much time did it consume from your office while you were east campaigning?

A. Probably six weeks or so, and that was before the increased work of the department.

Q. Yes, I understand. Mr. Schively, in one of the depositions in

evidence here—and you have testified about your verification of report on direct, so I take it is proper to ask this question simply as a matter of explanation—you say that this cost for verification of report when once borne will not be duplicated again. Will you explain to the Senate what that means?

A. I simply meant to say that when a company was once examined by the department that that examination would not be duplicated—that the company need not fear that we would come every year to the company, charging it \$200.00 this year and then \$200.00 the next year. I simply meant to say to the company that a visit to the company having once been made, would be all that would be charged to the company.

Q. In other words, if they were examined once they would never be examined again?

A. That thereafter, if examination was made, the examination would be made in such a way as not to charge it against that individual company.

Q. Against what company would it be charged?

A. It would be charged against the companies that were doing business at that time.

Q. You testified that this flat rate of \$200.00 was reached at a consultation with Mr. Nichols and based upon frequent trips to the east. Is it not a fact that only in 1905 and on one or two other occasions you did make such trips?

A. I do not remember to have made such trip in 1905. The trips were made before that. Mr. Nichols and myself have not gone back east on regular examination trips since 1905; that I remember.

Q. Don't you know that in 1905 you and Mr. Nichols examined thirteen insurance companies in the United States, covering seven states, and that it only took you three weeks?

A. I do not remember as to that fact.

Q. You don't remember that transaction?

A. I don't remember what year, that was in.

Q. Can you approximate it?

A. Mr. Nichols and myself frequently went back east together. Just what years we went, I am unable to say. We have not gone within the past two or three years, the increasing work of the department preventing.

Q. Don't you know that this trip was made in 1905?

A. I do not know whether that special trip was made in 1905. I think that that special trip was made in 1904.

Q. State to the Senate whether or not in 1905 and between the 18th day of September and the 7th day of October, you examined the following companies: American Benevolent Association, of St. Louis; Missouri State Life Insurance Company, of St. Louis; Royal Fraternal Union, of St. Louis; U. S. Casualty Company, of New York; Mutual Reserve Life Insurance Company, of New York; Lumber Insurance Company, of New York; Subscribers to the U. S. Lloyd's, New York; Security Life & Annuity Company, Philadelphia; New Jersey Plate Glass Insurance Company, Newark; American Assurance Company, Philadelphia; American Bonding Company, Baltimore; Order of United Commercial Travelers of America, Columbus, Ohio; and North American Accident Insurance Company, of Chicago?

A. I remember that Mr. Nichols and myself at various times have examined the most of those companies. I do not remember—I am quite sure that the records will show that the majority of those examinations were made in 1904.

Q. Didn't you say yesterday that to examine each company would take approximately thirty days where it was in a foreign state?

A. I do not remember to have made that statement.

Q. Well, what statement did you make, now, about that examination?

A. I said that, approximately, in the trips back east examining all these companies we never went to examine one company together, leaving the others out. Did you say that those examinations were made in 1905 of all of those companies?

Q. I am asking you if you made them in 1905 on the dates mentioned?

A. I think the majority of those examinations were made in 1904.

Q. Would you say that they were not made in 1905?

A. No, I am not certain as to that, but I am quite certain that the examinations of those were made in 1904.

Q. Do you remember what amounts you got from each of these thirteen companies?

A. I do not remember. Mr. Nichols was present on that trip and the financial transaction was with him.

Q. And even if he was not present, he was considered, as I understand you, as always being constructively present?

A. He was constructively present, because these charges were made on that flat-rate basis as always explained.

Q. Mr. Schively, your last report, which was presented to you on direct examination, shows that sixty-eight companies have been admitted in the last two years—I mean sixty-eight foreign companies, outside of companies doing business in this state which were admitted. Do you know whether or not \$200.00 was collected from each of those sixty-eight companies?

A. That were admitted? I know that the \$200.00 was not collected from each company.

Q. Then, why wasn't it collected from each company?

A. Because there are various reasons why some companies would not be charged this \$200.00.

Q. Now, Mr. Schively—

BY MR. ISRAEL: Just answer the question. He has asked the question. Answer it, why they were not charged.

A. For various reasons.

BY MR. ISRAEL: Well, tell him.

Q. Just one moment, before you explain, then you can explain; out of these sixty-eight companies there were none of them doing business in San Francisco or admitted from San Francisco?

A. I would not know as to that fact unless I would see the companies.

Q. Now, go ahead with your explanation, and state how much, if you know, was collected from them?

A. It must be clear that this advance fee was collected for the purpose of keeping out what would seem to the department as a wildcat company, or rather experimental company, or a company that for some reason should be kept out for the time being—some barrier raised. Now, that being the real purpose of the advance cost, you can readily conceive that there were companies to which this rule would not apply; for instance, companies suggested by Mr. Best. His knowledge was better than the knowledge in the department. Now, therefore, we would not charge companies brought in by Mr. Best this advance fee of \$200.00. His recommendation was equivalent to the \$200.00. Then,

again, managers or special agents would become desirous to introduce companies who would not be absolutely on the same basis with the department as Mr. Best. Their companies would not be charged this advanced fee of \$200.00. In other cases, agents or managers or officers would come to the department and say that they wanted to report for examination, would cheerfully pay the examination fee when it was made, would be willing to give any guarantee that the department asked with respect to the examination and the pay; companies of that kind would not have put upon them this advance fee of the \$200.00. While it was the policy of the department, there were many exceptions made because of these reasons which I have now stated.

Q. Well now, in view of that explanation, I will ask you how many of these sixty-eight companies were indorsed by Mr. Best?

A. Well now, it is impossible for me to itemize each company and tell which company this man recommended or did not recommend. I have given the general statement covering the ground.

Q. Then I will ask you further if you did not keep any record of what each company paid, how you would know that any of them did not pay \$200.00 or all of them did not pay that amount?

A. Just as I said yesterday; each company had its voucher. It was so fully the intention and is so fully the intention to examine these companies that the voucher was everything.

Q. Is there anything in the insurance commissioner's office of this state to show how many of these sixty-eight companies in the last two years paid over their statutory fee?

A. It is not a question—

Q. Answer the question: Is there or is there not anything?

A. There is no such record except by comparison; there is no such record.

Q. So, so far as you know, each and every one of these companies might have paid \$200.00?

A. I know that they did not.

Q. Well, I will hand you this report of yours and ask you to detail and itemize and pick out the companies that did not pay it. [*Hands the report to witness.*]

A. That is impossible to do.

Q. Well then, why are you stating to this Senate that there are some of them that did not pay it?

A. Because it is an actual fact they did not.

Q. That actual fact is on account of the general departmental policy, is it?

A. That is on account of the working out of that departmental policy.

Q. And that fact, in your conclusion, is not based either upon your memory or upon any memory of what fees were actually received, is it?

A. It is based upon the record of the fees paid, which is in the keeping of the company.

Q. And not in the keeping of the insurance department of the state?

A. The department had nothing to do with that, and therefore there is no reason that a record should be kept.

Q. The department had nothing to do with it because it was a personal transaction, was it?

A. The examination of the company is a personal transaction between the company and the examiner, in which the state is not interested.

By MR. LEE: I guess that is all, Mr. Schively.

*Re-Direct Examination—*

By MR. ISRAEL: Q. How many companies paid this advance fee?

A. I beg pardon.

Q. About how many companies were compelled to put up this advance examination fee?

A. Out of the 182 or the whole number?

Q. Yes, sir.

A. I should judge somewhere in the vicinity between twenty-five and thirty-five or forty.

Q. The rest were excused for the various satisfactory reasons shown the department that it would be safe to admit them without requirements?

A. Yes, sir.

Q. You were asked in your cross-examination by Mr. Edge why you did not examine the books of the company while you were there?

A. The Pacific Live Stock Association?

Q. Yes, sir.

A. I had no reason or cause to examine the books.

Q. Why not?

A. Because when I wanted information, the only information that I would require would be as to the liability of the company along the line of unpaid claims.

Q. When you wanted to know that, what would you do, if anything?

A. I would naturally turn to the head bookkeeper, Mr. Shallenberger, and ask him the condition of the association with respect to these claims.

Q. Who was this man Shallenberger?

A. He was the head bookkeeper.

Q. You were asked for the memorandum book in which you had your private accounts at the time you settled with Schrock, and you said that you had destroyed that memorandum book. State to the Senate what the circumstances of it were, how you came to destroy it?

A. There is an insurance company in the United States which sends each year to the various insurance departments a little diary book. I have one in my pocket at the present time.

Q. Pull it out; let's see what it looks like.

A. They send this book each year.

Q. Hold it up.

A. [*Witness holds up small, black memorandum book.*] Now, in this book I keep my private affairs, addresses that I want or the names of people to whom I personally want to write, or whatever private or personal information I want I keep in this. Now, this is 1909. In 1910 I will receive one of these books. I will transmit from this book whatever holds over from this year, transfer it to that book, and then destroy this book. Now, in 1906 I pursued that plan. I was there in 1906 and kept my private affairs in that book. In 1907, when I received the new book, if there was anything in the 1906 book that I wanted transferred—I even think I have an account in this book which I have continuously transferred from year to year until it is still in this book from 1906.

Q. Very good. Now then, you were asked quite insistently by counsel who first examined you if there was a meeting arranged between you and Ward or if you met by chance or at that date you were questioned regarding him in Portland, "What was the reason of the

meeting?" You stated that you were unable to say. Have you since found any record or anything that would refresh your memory as to that?

A. I have.

Q. What do you find?

A. I went to the—

Q. What do you find?

A. I found a letter which I had written to Mr. Ward.

Q. Have you got a copy of it?

A. I have.

Q. Hand it to counsel. [*Witness produces copy.*]

BY MR. ISRAEL: I propose to introduce this, for the purpose of meeting the impeachment of the question.

Q. Just hand it to counsel at the table there, Mr. Schively.

A. I want to see if this is the letter. This is the letter.

Q. Just hand it to Mr. Edge.

BY MR. ISRAEL: I propose to offer that, Mr. Edge.

[*Marked "Article 25, Respondent's Exhibit E."*]

Q. Hand it to the secretary and let him read it.

BY THE SECRETARY: Olympia, Washington, January 15th, 1906. Mr. E. R. Ward, 308 South Tenth street, Portland, Oregon. My dear Mr. Ward: I was unable to stop in Portland on my return home, as Mr. Nichols was anxious to arrive at Olympia and wanted me to be with him. I called on the insurance commissioner in San Francisco and had a long talk with him. He would not act in the matter until he saw your report. We can hold the matter of the report in abeyance until Murray returns from San Francisco. I failed to meet him there. I had to return with the commissioner, starting Thursday evening at 8 o'clock. Murray did not arrive there until about 9. I left a letter explaining everything to him. I received a dispatch from him to the effect that he would call upon the insurance company at California. We will take no further steps until we hear what he has to say. Let me hear from you. Sincerely yours.

Q. Now, from this letter, can you now recall what the object of meeting Ward in Portland was?

A. The Pacific Live Stock Association was endeavoring to enter the State of California. I was on my way to California to go there with Mr. Nichols to attend the underwriters' annual meeting, and I was desirous of seeing the insurance commissioner of California and discover what the law of this state was, what requirements he would place upon the Pacific Live Stock Association in order to enter this association to the transaction of business in California, and, if that was the occasion that I met with Ward, as appears to be, in Portland, it was to discuss that matter. Mr. Murray was to meet me in San Francisco and we were to go together. After I had first seen the commissioner, then Mr. Murray was to come as the attorney of the association and we were to go together, and I was trying to delay my visit in San Francisco until Mr. Murray arrived there. Mr. Nichols was desirous of getting home, and so I had to leave before Mr. Murray reached there and let him go and see the commissioner alone. I had previously seen the commissioner myself about the matter.

Q. Many times during your cross-examination, by the last counsel who examined you, you were asked if you were familiar with the law of mutual stock companies, as to the cost of examination being simply necessary and actual expenses. What was there to prevent you,



what would prevent your department, if you had adopted that rule, of making a trip east to New York or any seaboard city for the purpose of examining a single company?

A. No obstacle in the law.

Q. What would it cost for yourself and Sam Nichols to have gone to New York for the purpose of examining a single company in actual expense and necessary traveling expenses, making the examination and charging the company for your expenses, necessary and actual?

A. It would cost all the way from two hundred to two or five thousand or even ten thousand, according to the volume of the company's business.

Q. Well, supposing that a company that didn't take you but a couple of days to examine when you got there, that you and the secretary both went there, made the examination, presented your itemized statement, and came back, what would it cost the company, approximately?

A. I don't see how that could possibly cost—

Q. Both of you.

A. Both of us, yes, somewhere between \$500 and \$600.

Q. Now suppose that you had been called upon to go east and examine a fraternal company like the Woodmen of the World, or some other fraternal company with its ramifications throughout all the states in the Union. Suppose you arrived there and found the conditions were such that you had to check up the sub-posts or lodges, how would you have made the business and did the work, and at whose expense under the law is it charged to?

A. Just confining it to the one company?

Q. Yes.

A. We would be out a personal loss of from \$200 to \$300 on the business, if not more.

BY MR. ISRAEL: Gentlemen, upon Saturday in connection with the perjury charge, I had marked for identification a premium note, and I forgot to have it introduced. I want it to go in out of order.

BY MR. MANAGER EDGE: No objection.

[Marked "Article 25. Defendant's Exhibit F."]

BY THE SECRETARY: Amount of indemnity, \$75; amount of vote, \$7.50; amount of cash, \$—; (Date) Spokane, Aug 15, 1906.

#### RECEIPT OF MEMBERSHIP AND INDEMNITY

This is to Certify, That Mr. J. H. Schively, of Spokane, P. O., county of Spokane, and State of Washington, has paid a \$2 fee and a cash payment of \$— into this association, and also given one note for \$7.50, and is entitled to all the benefits, rebates and privileges as accorded by this association, and is entitled to indemnity on live stock as described in his application for a contract. The animals insured are as follows: 1 horses; .....jack; .....mules; .....cat-tle; .....cows. Insurance to commence at noon five days from date of application, if accepted. If you fail to receive your policy within fifteen days, notify the secretary at the home office.

PACIFIC LIVE STOCK ASSOCIATION,

W. J. WALKER, Agent.

607 Fernwell building, Spokane, Wash.

BY MR. ISRAEL: Q. What was the occasion of giving that premium note?

A. I took out the insurance in that company in order to have the rights of membership.

Q. Insurance on a horse?

A. Yes.

Q. Suppositious horse?

A. The horse was suppositious, presented to me by Mr. Walker.

Q. Mr. Walker gave you a horse and you insured it as a member of the association?

A. Yes.

*Re-Cross-Examination—*

By MR. LEE: Q. You said that, under the old law, in making those trips east you would be out of pocket a great deal of money. I want to ask you if the new law, which you helped pass, isn't exactly the same as the old law, except as to the method of paying the expense?

A. Under the law?

By MR. LEE: Repeat the question, Mr. Stenographer.

*[Question repeated by the stenographer.]*

A. The new law does not at all apply to fraternal companies.

Q. Isn't the new law, known as the Miller bill, exactly the same as the old law, saying nothing about advance expense fees, but simply changing the procedure by which the expense should be paid. I mean the old law referring to the detailed statement of expense, which says nothing about collecting them in advance?

A. For stock in mutual companies, yes.

Q. So the new law does not radically change the old law in any respect, does it, Mr. Schively?

A. I think not.

*[A recess was taken for fifteen minutes.]*

By THE PRESIDING OFFICER: Senator Cotterill has presented a question which he desires Mr. Schively to answer.

By THE SECRETARY: *[Question of Senator Cotterill.]* Q. Did you at any time, directly or indirectly, ask or receive from your successor, Mr. Bennington, or from any other person or from the Pacific Live Stock Company, any consideration for your retirement in his favor or the transfer to him of your rights and privileges as president or trustee of the company?

A. Not to the best of my memory and knowledge. I don't remember a single feature of that matter in a financial transaction.

By MR. ISRAEL: Q. State to the Senate every and all and any conversation you had with Mr. Bennington, omitting nothing.

A. The only conversation I ever remember having with Mr. Bennington was when Mr. Schrock brought him to me to introduce him to me as my successor—as the gentleman to be my successor—and that there he asked me as to my confidence or lack of it in the company—if that was the reason I was leaving the company; and I told him that was not the reason that I was leaving the company. To the best of my knowledge and belief, that is all I had to do with any one respecting Mr. Bennington.

Q. Did you ever state to Mr. Bennington or ask of Mr. Bennington—did you ever sell to Mr. Bennington or contract with Mr. Bennington to sell him anything in the company or out of it?

A. I did not.

*[Witness excused.]*

John D. Atkinson, being a witness called on behalf of the respondent, after having first been duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. John D. Atkinson.

Q. Where do you live, Mr. Atkinson?

A. I am living in Seattle at present.

Q. What is your profession?

A. I have been a lawyer. I am not practicing law at present.

Q. I will ask you if you did not at one time occupy the position of attorney general of the State of Washington?

A. I did.

Q. Between what years?

A. 1905, 1906, 1907 and 1908, inclusive.

Q. During that period do you remember the circumstance of being asked as attorney general by Mr. Nichols, the then secretary of state, and this respondent, John Schively, as to their rights to collect at the time of application of foreign insurance companies to enter the state a fee for examining—a fee to be paid in advance?

A. Yes, I remember a consultation on the matter.

Q. In that consultation, by reason of those matters that were stated to you, did you advise them that they could make such advance collection without violating the law?

A. Yes, sir, that was the resulting inference of the consultation.

Q. At the time you had under consideration the insurance law of the state that governed the examination of companies, did you not, General?

A. Yes, sir.

Q. You gave, in arriving at the opinion that such collections could be made—you gave the law the broadest interpretation it would permit?

A. Yes, sir, I did.

Q. You regarded the clause in that law as to itemized statements as being directory rather than mandatory, did you not?

A. Yes, sir.

Q. And you also were of the opinion that the matter of detailed statement was a matter rather between the insurance commissioner and the insurance company, rather than the State of Washington, which had nothing to do with it; that is true, is it not?

A. Yes, sir, I believe it would be.

*Cross-Examination—*

BY MR. LEE: Q. Mr. Atkinson, you went into office in January, 1905?

A. Yes, sir.

Q. State to the Senate when this conversation occurred, to the best of your recollection.

A. To the best of my recollection, it was about January, 1907.

Q. January, 1907. Proceed and detail to the Senate, which counsel did not ask for, what actually transpired there—who sought that advice from you, and what was said and done, giving to this Senate Mr. Atkinson, the details of that transaction.

A. I will state, to the best of my recollection, and say that while I was attorney general I was so exceedingly busy and had so many

things to attend to that it is only to the best of my recollection, which is not extremely clear, that Mr. Nichols came to my office one morning with a letter, which I believed referred to some corporation matter, and after that Mr. Schively came in (I do not know how soon—not very long) and in our talk Mr. Schively stated in effect that they desired to know what I would think of their collecting advance expenses in the matter of making insurance examinations. I believe that I asked them some questions—I do not know accurately what they are—to find out exactly what they wanted, but I believed that they stated that they found in going back east to make examinations it frequently required a month or more to do so, and frequently required some four hundred dollars to eight hundred dollars or more to pay expenses, and that they did not have money in hand and that it was rather embarrassing to get it. They asked me what they could do. Well, I am sure that I said in a half jesting manner, or earnest, it might be they could do what I did—go to the bank and quarrel—and that was one of the privileges of holding a state office; I am sure I made that remark. They said, "Will the state pay interest on it?" I said, "When I was state auditor, I was not in the habit of paying interest for anything"; I thought not. They asked me if it was possible to collect these expenses in advance. I said to them, "You know what the law is, and the law directs that you make the examination; you must submit the vouchers for the examination to the companies and they pay for it." Well, they asked if they could not be made to pay it in advance. I said that if they did so willingly that there probably would not be anything illegal about it; that it would seem to be a good principle of law—I think I said that—but I had it in mind that where a state officer is directed to do an act, and he can accomplish it—is not able to do it directly—he might do it indirectly if there was not a penalty, and I said to them, "There is no penalty attached to this." I said to them, "My advice would be for you not to make these advance collections if you can help it." If I said "advice," I must say here I regarded it then more or less an informal talk, and say when we gave advice we gave it in writing.

Q. There was no written opinion given in this case?

A. No, sir, no written opinion.

Q. And the advice was sought by John Schively, deputy insurance commissioner?

A. Well, Mr. Nichols was present, and I presume they both talked—

Q. He was present when Schively came in and asked you, and then you addressed them—Schively and Nichols?

A. Yes.

Q. Was there anything said at that time about collecting a flat rate?

A. I think not. I am sure there was not.

Q. Was it not your understanding, Mr. Atkinson, that that conversation was directed primarily to examinations of a few companies whose examinations were to be made, and they did not have money to cover those examinations?

A. I am inclined to think it was that way. I would not be positive.

Q. Do you remember whether or not you advised Schively or Nichols at that time they could collect an advance examination fee from each and every company coming into the state to cover prespective examinations which might occur some time in the immediate or distant future?

A. Will you state that again.

[Question read.]

A. I don't think that was specifically discussed.

Q. I will call your attention, Mr. Atkinson, to this testimony given before the investigating committee by yourself, under oath, and ask you if it is substantially correct: [*Reading.*] "Q. 'You are positive at this time, Mr. Atkinson, that you never advised him that a flat rate could be collected?' A. 'Yes, I am positive that I did not.' Q. 'And you are also positive that you advised him that this preliminary fee, if it were exacted, could only cover actual expenses?' A. 'Yes.' Q. 'Was there any conversation had at that time about examinations to occur in the future, either in the immediate or in the distant future?' A. 'No, I recollect none.' Q. 'Did he ask you at that time whether or not this fee could be applied, or this advance payment could be applied, to all insurance companies coming into the state?' A. 'That was not discussed.'" Q. Is that substantially correct?

A. I think that is what I said.

Q. In other words, the conversation related to some examinations, as you remember it now, which had to be made at that time of companies doing business in the state, and they did not have money to go east and did not want to borrow the money?

A. Well, that was as I recollect it, the chief thing.

BY MR. ISRAEL: What was the last part of that?

A. I recollect that as the chief thing.

BY MR. LEE: Q. And the best of your recollection now is this conversation occurred in or about January, 1907?

A. That is the best of my recollection, but I would not be positive, as I said in the other examination.

*Re-Direct Examination—*

BY MR. ISRAEL: Q. Although your mind is hazy regarding this matter, your recollection is, and your intention was that they would gather from that conversation they could make an examination fee—charge in advance?

A. I presume, in all fairness, that would be the inference.

Q. And your recollection does serve you, you said what you did before the committee, and it serves you now that there was some discussion about this law being directory and not mandatory in this fee bill?

A. Yes.

Q. And if your recollection does serve you, at that time you made a broad construction of this act that was under consideration?

A. I have so stated.

Q. And if your recollection does serve you, in making the broad construction that you made, that the proposition—that there was no penalty to this matter, and you considered it more a matter between the insurance company and the insurance office than the insurance office and the public? That is true, is it not?

A. Certainly.

*Re-Cross-Examination—*

BY MR. LEE: Q. This is read from—calling your attention to the testimony on page 312 before the committee: "Q. 'Did he in that conversation lead you to believe that this advice was sought so as to protect himself in the examinations he was about to make, and the expenses of which he could not meet?' A. 'My idea was that Mr. Schively did not have the money to go to make these examination, and that he probably was not in good shape to borrow it.' Q. 'As a matter of fact, he said that there were some companies that ought to be examined at that time, did he not, and that he could not pay the examination expenses?' A. 'That would be the implication.' Q. 'That was the purpose

in seeking this advice from you?" A. 'I think so.' Q. 'And the purpose was not to find out whether there could be a flat general rate applied to all companies coming into the state?' A. 'I think it was not.'" Is that substantially correct?

A. That is what I thought.

*Re-Re-Direct Examination—*

BY MR. ISRAEL: Q. And all that testimony was given qualifiedly, because you did not remember everything that was said before this committee, but that was to the best of your recollection?

A. Yes.

Q. And at this time, before the committee, Mr. Schively was not there and was not represented?

A. Yes.

Q. And you only answered such questions as they saw fit to put to you?

A. Yes, sir.

Q. You volunteered nothing?

A. I think not.

Q. At the time you were called before that committee your attention had not been directed to this consultation at all, until directed before this committee, and the matter had gone from your mind?

A. Yes.

Q. And you recalled as best you could?

A. Yes.

Q. Since this matter has come up you have been trying to recall all of this?

A. Sometimes—certain times.

Q. And the result is as you believe today?

*Re-Re-Cross-Examination—*

BY MR. LEE: Q. Notwithstanding that fact, you are willing to rely understandingly upon what you said before the investigating committee under oath?

A. Yes, I presume so.

[*Witness excused.*]

BY THE PRESIDING OFFICER: Call the next witness.

BY MR. ISRAEL: We will call Mr. Wagnon.

H. D. Wagnon, a witness produced on behalf of the respondent herein, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. H. D. Wagnon.

Q. Where do you reside, Mr. Wagnon?

A. At Portland, Oregon.

Q. What is your business?

A. At the present time I am manager of the Mutual Fire Company, of Portland, Oregon.

Q. You previously to that time were connected with the Union Guaranty Association, of Portland, Oregon?

A. Yes, I was manager of the association from the time of its organization up to the first of July a year ago.

Q. Then, you were with them on May 7th, 1907?

A. Yes.

Q. Do you recall an examination being made at that time of the company by Mr. Schively, the insurance commissioner of the State of Washington?

A. Might I be permitted to make the explanation now, to get this matter over?

Q. Yes.

A. The Union Guaranty Company was a stock company, organized by some of us men of Portland, of whom I was one, and in the first weeks of April we were admitted to do business as a company. The Union Mutual Aid Association, of Portland, of which I was manager, was a company that was organized to do a mutual accident business. We also did business in the State of Washington. We wished to re-insure that association's business in the Union Guaranty Association, a stock company. There was also another mutual association that had talked some with us about reinsuring. We knew it did business in Washington. We wanted Mr. Schively there. I wrote to Mr. Schively—wrote him a letter asking him to come to Portland at my expense. While Mr. Schively was there—of course it was a new company—he made what examinations were necessary, that is, to look over our securities and the money in the bank. The principal thing was filling out the report—like out annual statement. We wanted to enter the State of Washington. It was different than our annual statement in the State of Oregon, and he gave the secretary of the company the necessary instructions in doing that. Now, we wanted Mr. Schively's advice. We wanted Mr. Schively to know what we were doing in the way of reinsuring these mutual companies—taking over these companies—and he gave us that information, but the most valuable information he gave us was about another organization which he advised us not to insure with—probably it is not proper to mention, but I considered that worth more than all the rest, and I considered Mr. Schively was there at my expense under the fee that was paid to him. When we came to settle up with Mr. Schively he told us that the legal fee was \$35—I think \$35 is what he said. There were about three licenses asked for at that time—one for myself and for a couple of other men that worked across the river occasionally in Washington—and that made it about fifty dollars; and the expenses and such, and he asked me if his services had been worth \$100 to us, and I said, "Yes," and the check was made to him for \$200.

Q. Did you consider there was anything extortionate about that?

A. No, sir, not in the least. I considered it very reasonable for the services that he gave.

Q. Have you been examined by the Oregon commissioner?

A. Since that time we have been examined—the Union Guaranty Company, while I was manager of it—and our examination was by the Oregon commissioner of insurance.

Q. What is the practice of the Oregon commissioner of insurance in charging for examinations of companies in Oregon?

A. The Oregon law says not to exceed \$10 a day. The Oregon commissioner came down; he said he wanted to examine the three Oregon stock companies, if it was possible—the Union Guaranty Company, the Union Life and the Columbia Life. He said that \$10 was not sufficient; that he was not an actuary and he wanted an actuary for the purpose of making examinations—that he himself was not an actuary. He asked us if we could stand an expense of not to exceed one hundred and fifty dollars. He thought that would cover it. We told him we would stand the expense, whatever it was.

Q. Just for the one company?

A. Just for the one company, and the others I think told him the

same. When we settled the bill it was about \$230. That is my recollection.

Q. As against the law of \$10 a day?

A. As against the law of \$10 a day.

Q. Has he been impeached yet?

A. No, sir.

*Cross-Examination—*

BY MR. LEE: Q. Just one question, Mr. Wagnon. You paid this as an advance fee to get into the State of Washington?

A. No, sir, not by any means.

Q. At that time you were in the state—

A. Now, understand me—

Q. Answer the question. At that time were you in the state?

A. As the Union Guaranty Association, no, sir.

Q. And after the payment of this money you went into the state as the Union Guaranty?

A. Yes.

*Re-Direct Examination—*

BY MR. ISRAEL: Q. Were you in the state any other way with the company that became the Union Guaranty Association?

A. With the company that was reinsured in the Union Guaranty, the Union Mutual Aid. We had some four or five hundred policy stockholders in the State of Washington.

Q. At that time you called on Mr. Schively you were reorganized into the Mutual company from a fraternal company?

A. Lots of people would call it reorganized, but insurance people would not call it reorganized.

Q. That would be the fact?

A. Yes, certainly.

Q. From a fraternal into a mutual?

A. From a fraternal into a mutual. Reinsured it in the Mutual.

Q. Then, the Mutual came into the state?

A. The Mutual was already in the state and had been for three or four years.

*Re-Cross-Examination—*

BY MR. LEE: Q. You understand Mr. Schively was acting as an expert or a deputy insurance commissioner of the State of Washington?

A. I do not understand that he was acting either as an expert or as insurance commissioner.

Q. How do you understand that he was acting?

A. He had information that he could give us. Mind you, I would not want to do anything in any state, take any kind of action, without letting the insurance department know what I was doing. If Mr. Schively told us we could not do this, we simply would not reinsure it.

Q. I want to know whether he was acting as a deputy insurance commissioner or as an expert?

A. If you are of a mind to call it insurance expert, you can call it.

Q. What do you call it?

A. From the knowledge that he had given us of how he thought this reinsurance transaction could be carried on.

[Witness excused.]



Charles A. Murray, a witness, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. Charles A. Murray.

Q. What is your profession?

A. An attorney at law.

Q. Where do you live at the present time?

A. Tacoma.

Q. Were you in any wise connected with the affairs of the Pacific Live Stock Association, of Spokane, in 1906?

A. I was attorney for the Pacific Live Stock Association.

Q. Were you ever there as the receiver for the company?

A. I was appointed receiver for that company by Judge Whitcomb.

Q. You were appointed receiver; do you remember when that was?

A. I think it was in February, 1907. That is my recollection of it.

Q. How long were you receiver?

A. About two months.

Q. Do you remember the circumstance, or do you remember a circumstance while you were receiver, from a knowledge gained from the books, of accusing John Schively of having gotten \$1,200 more than his salary with the Live Stock people?

A. I have no recollection that would enable me to answer that question in the affirmative. Mr. Schively came to see me one day while I was receiver, soon after the reports had been prepared. I was ill at the house at the time, and we discussed the report and he criticised what the report said about his account.

Q. Claiming that he did not get that \$1,200?

A. Claiming that it was not correct.

Q. Mr. Murray, did you ever hear of these Ward notes since?

A. Yes.

Q. I will ask you if, as receiver, these Ward notes were ever surrendered by the Pacific Live Stock Association into your possession?

A. I have no recollection of ever having seen those notes.

Q. Did you ever have in your possession any notes of the Pacific Live Stock Association upon which the name of Mr. Schively was attached as maker?

A. I do not remember having seen any notes with Mr. Schively's signature

*Cross-Examination—*

BY MR. MANAGER EDGE: Q. Did you ever see the Ward notes at all?

A. I have no recollection of ever having seen them.

Q. Not having seen them, of course, if Mr. Schively's signature was on them you would not have seen it?

A. I naturally would not.

BY MR. ISRAEL: This we directed to the fact that Mr. Schrock testified that he surrendered the notes, and not for any other question.

BY MR. MANAGER EDGE: I think your recollection of his testimony is poor.

Q. You took over the affairs and the books of the company, took all of their canceled notes belonging to the company, presumably?

A. I do not remember ever having seen any canceled notes of the

company. There were many things came into my office—I would not say that they were not, but they would be dead assets, of course, and I would not pay any attention to them.

Q. And the long and short of it is you do not know anything about the notes or whose names were upon the notes?

A. I have no recollection whatever about those notes?

[*Witness excused.*]

H. T. March, a witness produced on behalf of the respondent herein, being first duly sworn, testified as follows:

*Direct Examination—*

By MR. ISRAEL: Q. What is your name?

A. H. T. March.

By MR. ISRAEL: I am directing this witness to this article 19.

Q. What is your business?

A. I am in the real estate and loan business.

Q. What business were you engaged in on June 12th, 1906?

A. I was then president of the Farmers' Mutual Live Stock Insurance Association.

Q. Did you know one Mr. Lichty at that time?

A. I did.

Q. Was he with the company at that time?

A. He was the treasurer of the company at that time.

Q. Do you recall the circumstance of John H. Schively, deputy insurance commissioner, coming to the office of that company for the purpose of making an examination?

A. I do.

Q. What were the facts and circumstances?

A. He came there upon my request to examine our company in June, 1906.

Q. Now, who were the officers of the company at that time?

A. I was president, and Mr. Morrill was secretary, and Mr. Lichty was treasurer.

Q. Who was the manager?

A. I was, as president, and general manager.

Q. Where was the main office of the company?

A. The main office of the company was then situated at 420 Rookery building, Spokane.

Q. Was that where the books of the company were kept?

A. That was where the books of the company were kept, yes, sir.

Q. Where was Lichty's office?

A. Mr. Lichty's office was in the Jamison building, a block further west.

Q. Now then, Mr. Lichty has testified that the examination of the company was perfunctory, that it was made in the office of the company in the presence of— What is that man's name?

By MR. SCHIVELY: Farnsworth.

Q. Farnsworth and himself and that Mr. Farnsworth was not all the time present; that after the examination was made, Mr. Schively demanded \$200.00, and he was refused and he finally cut his demand to \$100.00, and the president thought he had done a good day's work in

settling with him for \$100.00. Will you please give the Senate your version of that examination and all of its details?

A. First, I want to tell you that Mr. Farnsworth was the assistant, my assistant, and was in the office.

Q. Was not president of the company?

A. Was not president of the company.

Q. You were president of the company.

A. I was president of the company at that time, but Mr. Farnsworth was the assistant. And I believe I had Mr. Farnsworth write Mr. Schively to come and examine us—to examine our company. And in a few days Mr. Schively came in. I had not then met him. Mr. Farnsworth knew Mr. Schively and brought him into my room and introduced him to me. That was the first time I had ever seen Mr. Schively, or ever met him, and I said, "Mr. Schively, I presume you have come over to examine us?" He said, "That is the purpose of my trip over here." I then took him and introduced him to the secretary of the company, and possibly the bookkeeper was there, and maybe the stenographer, but I would not be sure, and I told the secretary and the bookkeeper to give him any and all information that he may require or desire. He came in the office two or three times and was there in the city two or three days.

Q. Who was the secretary?

A. Mr. J. A. Morrill.

Q. Go on.

A. I say Mr. Schively—I met him there for two or three days in the office. He had gone on with the examination with the secretary and the bookkeeper.

Q. Do you recall the incident of verifying your securities?

A. Yes, sir. Mr. Schively came to me and said, "I would like to go over to the bank and verify your bank account." I said, "Very well, Schively; I will go with you." And we took the car and went over to a bank, where he got the records he wanted from the bank.

Q. Do you remember that during all these times whether Mr. Lichty was present?

A. Mr. Lichty was over there in his own office, I presume. He was not in our office.

Q. In a separate building?

A. It was a separate building, one block away.

Q. Do you remember the circumstance of Mr. Schively being finally paid for his examination?

A. I asked Mr. Schively myself personally what his charges were. He says, "\$100.00." And then I instructed our secretary to draw an order on the treasurer for that amount. I signed the order, as also did Mr. Morrill, as secretary. I then turned the order on the treasurer over to Mr. Schively. I believe, but I would not say for certain, that Mr. Farnsworth then took Mr. Schively up to Mr. Lichty's office to get his money; I would not say for certain whether Mr. Farnsworth went with him or not. They went out of the office together, any way.

Q. And that was all Lichty had to do with this examination?

A. As far as I know, it was all that he had to do.

Q. And there was no beating of Schively down from \$200.00 to \$100.00 in Lichty's presence?

A. Certainly not in Lichty's presence—not while I was there.

Q. Did you consider the charge exorbitant?

A. No, I did not.

Q. You were satisfied with it?

A. Very well satisfied with it.

Q. And you say Mr. Schively was there some three days in his examination?

A. I did not say three days in his examination.

Q. Three days in and about the examination?

A. In and about the office for three days, yes, sir.

*Cross-Examination—*

BY MR. LEE: Q. You don't know what conversation occurred in the presence of Mr. Lichty when Schively was there, do you?

A. Oh, no.

Q. For all you know there might have been a deduction from \$200.00 to \$100.00 in that conversation?

A. There might have been, so far as I know, but I—not in my presence.

Q. Now, in that connection, was any detailed statement of expenses presented to you showing expenses incurred in that examination?

A. Nothing but the receipt; that is all.

Q. Do you know whether or not Mr. Schively examined any other companies at that time?

A. I never asked him on that.

Q. Do you know whether or not he said that, inasmuch as he was examining other companies, the charge would be only \$100.00?

A. I don't remember him saying that. He may have said so; he may not.

*Re-Direct Examination—*

BY MR. ISRAEL: Q. Now, counsel asked you a question as to whether it might not have been that there was a getting down from \$200.00 to \$100.00 between Lichty and Farnsworth in his office. Did you mean to say that?

A. Why, I don't see any reason why there should be, because he had already had his order on the treasurer for \$100.00.

Q. From your office and had gone over to Mr. Lichty's office?

A. Gone over to Mr. Lichty's office.

BY MR. ISRAEL: I find that is one of counsel's strong points. That is all, Mr. March.

BY THE PRESIDING OFFICER: Will this witness be needed further?

BY MR. ISRAEL: He will be excused, your honor.

BY MR. LEE: I think not.

[Witness excused.]

Charles F. Neal, a witness produced for and on behalf of the respondent, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. Charles F. Neal.

Q. Where do you live, Mr. Neal?

A. Seattle.

Q. What is your business?

A. Insurance.

Q. How long have you been in the insurance business?

A. About twelve years.

Q. During that time have you had any connection with the class of insurance known as liability and employers' bonding insurance?

A. Yes, sir.

Q. How much experience have you had in that line?

A. I have been in the general agency business since June, 1899, for a surety bond company.

Q. What company?

A. I was first with the American Bonding Company, and that was in Idaho. The state passed a depositary law, and that company withdrew from the state. Then, in—I think it was May, 1903—I went with the Title Guaranty & Surety Company. It was then the Title Guaranty & Trust Company, of Scranton, Pennsylvania.

Q. Have you had the experience and policy and knowledge of other companies?

A. Yes, sir. I have also been with the—I came to Seattle with the Massachusetts Bonding & Insurance Company.

Q. If there is a fixed rule or policy of these bonding companies in regard to the matter, was it the fixed rule or policy as to writing liability insurance or liability bonds—I rather should say for an employee, where the application represents that his remuneration is on a commission basis.

BY MR. MANAGER EDGE: That is not the proper way to ask that kind of a question. He should be asked first, whether or not there is such a custom. You have asked him what the custom is. If he does not know there is such a custom, he should not be permitted to answer such a question.

BY MR. ISRAEL: I will yield to the gentleman's contention. The contention is well made.

Q. Do you or do you not know whether there is a custom or rule of the bonding companies throughout the United States as to the writing or issuing of liability bonds on persons represented to be compensated on a commission basis; now, do you know whether there is a custom or rule?

A. There is a rule.

Q. What is that rule?

A. Well, in general, the rule is that you need not bother with taking an application where the applicant receives his compensation solely by commission, as we at the home office will not bother with it. We will not execute the bond.

*Cross-Examination—*

BY MR. MANAGER EDGE: Q. Mr. Neal, if it should appear from the testimony of reputable persons who stated that they had been bonded upon a commission basis and that was shown to the company, you might believe that your rule was somewhat fallible, wouldn't you?

A. Well, I don't believe that an insurance company has any iron-clad rule. They will break over now and then, just like most other corporations do once in a while.

Q. Then, you don't mean to tell the Senate that no person was ever bonded who worked on a commission basis, do you?

A. No, sir, I do not; but I say that is the rule of the companies and they impress it on all their agents, as well as their general agents.

Q. And that would not preclude agents from taking applications that recite that the applicant was on a commission basis?

A. Oh, some agents take applications for anything that comes in.

Q. Yes, and the company could turn the application down or grant it, as they felt?

A. Yes.

Q. Circumstances warranted it?

A. Yes.

*Re-Direct Examination—*

BY MR. ISRAEL: Q. You say you represented the Title Guaranty & Surety Company?

A. Yes, sir.

Q. Who is J. H. Law?

A. He is now and has been for some time the secretary—that is, I mean by some time, he has been probably for about four years.

BY MR. ISRAEL: Here is a telegram, gentleman, from J. H. Law, received by J. H. Schively, on the date of the 21st. I realize it is not admissible, if you object to it. I wish you would look at it and see if you will allow me to introduce it without objections. [*Hands to opposing counsel.*]

BY MR. MANAGER EDGE: There is no showing here that this is the same company, no showing that the names of the persons mentioned in the telegram were asked to find out whether or not any bond or application has been made from them, and being so indefinite and uncertain in its character, absolutely inadmissible on any theory, we will therefore object.

BY MR. ISRAEL: I might straighten it up a little, counselor, to remove some of the technicalities.

Q. Is there any other Title Guaranty & Surety Company operating in the United States except the one at Scranton, Pennsylvania?

A. As a surety company?

Q. Yes.

A. None that I know of.

Q. And is the Title Guaranty & Surety Company, of Scranton, Pennsylvania, a corporation?

A. Yes, sir.

BY MR. ISRAEL: Now then, that answers parts of your objections, counselor. J. H. Law is the secretary—this witness says he is the secretary of the Title Guaranty & Surety Company, of Scranton, Pennsylvania. The telegram is from Law, as secretary of the company.

BY MR. MANAGER EDGE: The objection still stands, if the court please.

BY MR. ISRAEL: I will pass it to the court and ask the court to rule upon it. I am away over the bounds now, your honor, upon the proposition this is not a court at law, but, as the prosecution contended, a legislative court. They have driven me to that position; I am occupying it and arguing the case upon that theory.

BY MR. MANAGER EDGE: You will still remember the testimony that the application was received. It might be possible there was no bond even issued. We will produce the other members of that corporation here, who will testify that they were upon bonds and were bonded upon a millage basis.

BY THE PRESIDING OFFICER: This is inadequate. The objection will be sustained.

BY MR. ISRAEL: You will probably allow me to have the telegram. You may examine the witness, if you have anything further.

BY MR. LEE: That is all, so far as we are concerned.

BY THE PRESIDING OFFICER: The witness is excused and will report to the clerk.

BY MR. ISRAEL: I will ask for Mr. St. Morris and to get his books from the vault and to bring them here.

BY THE SECRETARY: The books are right here, I think.

BY MR. ISRAEL: Then ask for Mr. St. Morris to come in.

C. D. St. Morris, a witness produced for and on behalf of respondent, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. C. D. St. Morris.

Q. Where do you reside?

A. Spokane.

Q. Have you anything to do with the Farmers' Mutual Live Stock Insurance Company?

A. I was appointed receiver for the company in last January.

Q. You are in charge of the books and accounts and data of the company?

A. I am.

Q. I will ask you whether or not you have any data in your books regarding the expense of this check— Was that introduced in evidence?

BY THE SECRETARY: No, that was not marked as an exhibit.

*[Counsel hands check to witness.]*

A. There is an entry in the ledger showing \$300.00 has been paid to Mr. Ligget. That is the only recollection I have of it.

Q. Where is the stub for the check?

A. The stub of this check was brought here by Mr. Lichty. He was connected with the company and he told me that the check was torn out, and he brought back a stub to me, and when I was subpoenaed the subpoena did not call for anything except for the months of May and June, and hence I left that stub there. I brought the check books for the months of May and June and this check was torn out from those stubs.

Q. Well, you have not the stub with you?

A. I have not the stub with me.

Q. And there are none of the books that offer you any light as to the transaction, beyond the mere charging of the item?

A. None at all.

Q. For what purpose was it given?

A. Nothing at all.

Q. Do you notice a double indorsement on the back of it? *[Witness looks at book.]* Now do you find in your book or among your papers any voucher for that check?

A. No, I found nothing at all.

Q. Nothing that would indicate the purpose of its payment?

A. Nothing at all.

BY MR. ISRAEL: That is all. It is useless. I sent for him blind and there are no results.

[*Witness excused.*]

BY MR. ISRAEL: Your honor, please, under that ruling of yesterday excluding all witnesses out of chamber, I expect my witnesses are all down town, because I told quite a number of them we would not need them this morning.

BY THE PRESIDING OFFICER: I think we may as well adjourn till 1:30.

BY MR. MANAGER EDGE: Just a moment. I think we have one.

BY MR. ISRAEL: Well, gentlemen, I will have to 'fess up. I haven't any more witnesses except Mr. Paul. Yes, here is one, J. A. Miller, that I did not excuse until after dinner.

J. A. Miller, a witness produced for and on behalf of the respondent, being first duly sworn, testified as follows:

BY MR. ISRAEL: Q. Mr. Miller, you are the author and the introducer of the insurance bill known as the J. A. Miller bill?

A. If you refer to House bill No. 401, yes.

Q. That is the one in regard to the changing of certain methods in the insurance office?

A. Yes, sir.

Q. I will ask you whether or not in preparing that bill you were in any way consulted by the insurance office?

A. Yes, I was.

Q. Did they offer aid and advice in preparing the bill?

A. I had been discussing with Mr. Schively the criticism that had been made of his office on account of the manner of examination of companies at that time, and the thought had suggested itself to me that the present law should be amended to prevent any further criticism or any further practice of that kind. I told Mr. Schively that I would have a bill drawn up. He said that he would be very glad if I would do so. I then asked Mr. Lee to draw the bill up, giving him my ideas along the lines which Mr. Schively and I had talked.

Q. It seemed to be satisfactory to Mr. Schively?

A. Yes, sir.

Q. After that, after the bill was introduced, I will ask whether or not Mr. Schively or Mr. Schively's office were at all insistent about it not getting lost in the whirlpool and getting it through?

A. Why, I don't know anything about Mr. Schively. Mr. Madge was assisting me in getting it passed through the House.

Q. Mr. Madge, of Mr. Schively's office?

A. Yes, sir.

Q. Do you remember whether any of the memoranda that was used by Attorney General Lee in drawing the bill was prepared by Mr. Schively?

A. I don't know as to that; no.

Q. This was in the early part of the session, last year?

A. Well, I would judge just about the middle of the session.

*Cross-Examination—*

BY MR. LEE: Q. Do you know whether this proviso was in the original bill: "*Provided*, That when it becomes necessary for the in-



surance commissioner to appoint a special examiner or actuary to make such investigation or examination, who receives no salary in addition to his actual expenses incurred in such examination, he shall receive from the company so examined a reasonable compensation?"

A. That was in the original bill.

Q. Do you know whether or not it was in the bill that passed?

A. No, it was not.

Q. As passed the House?

A. No, sir.

Q. Was it stricken out?

A. Stricken out on the floor of the House.

Q. Do you know the history of that proviso?

A. No, I don't. When the bill was handed to me, it was prepared by Mr. Lee, of the attorney general's office, and that clause was in there.

[*Witness excused.*]

BY THE PRESIDING OFFICER: We will adjourn until 1:30 this afternoon.

At 11:55, a recess was taken until 1:30 p. m.

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### AFTERNOON SESSION.

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The Senate, sitting as a court of impeachment, reconvened at 1:30 p. m.

BY SENATOR COTTERILL: I move that Senators Fishback and Knickerbocker be assessed the usual fine of five dollars each for not being in their seats at the time of roll call.

BY SENATOR EASTHAM: I suggest that on account of the size of Senator Fishback that his fine be increased to \$10.

BY THE PRESIDENT: As many as are in favor of the motion say "Aye,"; contrary, "No."

BY THE PRESIDENT: The nays have it.

BY SENATOR PIPER: I would like to ask what the decision of the chair was.

BY THE PRESIDENT: The chair was clearly of the opinion that the nays had it, and so stated.

BY SENATOR PIPER: I would like to call the attention of the chair to the fact that it takes a two-thirds vote here to excuse any one, and I move that they be not excused and fined five dollars.

BY THE PRESIDENT: The chair will grant you a division on the question. Those in favor of the fine will arise and stand until counted. The motion prevails. The gentlemen are fined.

BY THE PRESIDENT: Senator Presby will take the chair.

BY THE PRESIDING OFFICER: Mr. Israel, are you ready to proceed?

BY MR. ISRAEL: I desire to call Mr. Schively on a matter omitted in his rebuttal.

BY THE PRESIDING OFFICER: You may do so.

BY MR. ISRAEL: Q. Mr. Schively, while you were under cross-examination by Counsel Edge you were asked the question if Mr. Ward didn't furnish the money to pay a fine for you in Portland, and upon your answer that he did not you were not further questioned. What were the circumstances of your being fined in Portland, if you were fined?

A. During this day, while I was in Portland, I met a lady who had been at one time a stenographer or employee of the Senate or House here in Olympia. When I met her we passed the usual courtesies of the day and I told her I was busy then, but if she were at liberty I would enjoy taking her to a theatre that evening, and to which she consented, and we went to the theatre together, and after the play was over I suggested to her that we go to Mr. Richard's restaurant for some refreshment. We went to Mr. Richard's restaurant, and while we were partaking of refreshment the officers of the city arrested everybody in the house, and I said to the officer, "You don't want to arrest me; I am a state official of another state. I am an official of another state, and I am not in any way included in your local quarrel."

Q. What was the local quarrel?

A. Mr. Richards was having a quarrel with the local authorities over the subject of taking out private boxes in a restaurant. The officer said, "Well, we are under orders to bring everybody to the station." I said, "I don't want to ride in this wagon; it is an open disgrace." He says, "You had better ride in the wagon than to walk along the streets under arrest, and the crowd would follow you." And I said to him, "It is not right to arrest me." He then said, "Don't be unnecessarily worried over this. We can't help it. You go down there and pay your bail and they will let you off immediately, and that will close the matter." "Yes, but," I said, "I will have to go down there and give my name, and it will be published in the paper and it will have the color of disgrace." He says, "You give any name that comes to your mind and pay your bail and get out, and forget it." I followed his instructions; I walked up into the office, to the desk, and said, "What is the bail?" The man said, "Fifty dollars." I paid him the fifty dollars and walked away. Mr. Richards subsequently met me that evening and said, "Your arrest, Mr. Schively, was a mistake," and he handed me back the fifty dollars, and that closed the incident, except that afterwards when I met certain friends in the city they were joking me about it. It was a matter of the "horse on me" and they were laughing about it, and I was told the next morning by the clerk that the governor of the state had called on me to apologize.

Q. What was the condition of your finances at that time?

A. I was on my way to San Francisco at that time and had plenty of money with me.

Q. Did you take any money—did you borrow any money from Mr. Ward at that time?

A. I did not. There was no necessity of so doing.

*Cross-Examination—*

BY MR. MANAGER EDGE: Q. Were you in the box at the time you were arrested?

A. I was in the box partaking of refreshment.

Q. Do you mean to say you were simply sitting there innocently partaking of refreshments when the officers came and took you to the station?

A. I mean to say that exactly.

Q. And you did not get any money from Ward?

A. I did not.

Q. Don't you recall sending a messenger to Ward's hotel, where he was stopping, and telling him to come down there and see you right away?

A. I didn't—I did not—for I had no idea where he was stopping at that time.

Q. You do not recall him coming down to the hotel the next morning when you were at the hotel and seemingly in the custody of some one, and you told him that you were without funds and were in trouble, and asked him for one hundred and fifty dollars at that time, and he wrote you out a check for one hundred and fifty dollars, you stating to him that you hadn't any money and you were in trouble and had to have it?

A. I was not in trouble; I was not under arrest. If Mr. Ward gave me any money at that time, it was for the purpose of paying my—what might be expended in San Francisco in the arrangement I was to make for his company with the insurance commissioner. I was not short of funds.

Q. You say, then, that he may have paid you some money at that time—one hundred and fifty dollars?

A. I don't remember that, but if he did it had no connection whatever with this other affair; that had all been settled the evening previous.

Q. So you won't state now whether he paid you any money or not?

A. I will not, because I do not remember that part, but I know it had no connection with the other affair. I was not seemingly in charge of any officer, because that was concluded within three or four minutes at the station.

Q. And you told them there you were a state official, and made that in your explanation?

A. I did.

Q. You didn't state at that time you were simply a deputy and had no authority or anything of that kind, did you?

A. No, sir.

Q. And if Mr. Ward testifies that he paid you money there for the purpose of getting you out of trouble, he has testified to what is not the truth?

A. He absolutely has.

Q. Were you in possession of all your faculties at that time, Mr. Schively?

A. I absolutely was, for I was entertaining a lady.

Q. Well, that in itself might not be sufficient evidence on that, Mr. Schively.

BY MR. ISRAEL: Well, I think that is a matter of argument, Mr. Edge.

[No response.]

*Re-Direct Examination—*

BY MR. ISRAEL: Q. Who told Mr. Ward of the episode of the night before, if you know?

A. After the incident was closed I happened to meet Mr. Ward and was speaking of the matter lightly and was laughing over the matter as an incident with Mr. Ward, and he was laughing at it with me, and the gentlemen around there were generally saying, "Well, Schively, this is one on you."

Q. At that time you were on your way to California, and in the trip to California you were to make arrangements for the Pacific Live Stock to enter the state?

A. Yes, sir.

Sam A. Madge, being a witness called on behalf of the respondent, after first being duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAELS Q. What is your name?

A. Sam A. Madge.

Q. Ever reside in Portland?

A. Never resided there; no, sir.

Q. Have you been in and out of Portland to any extent?

A. Yes, sir, quite a good deal.

Q. Ever interested in a hotel there?

A. Yes, sir.

Q. What hotel?

A. The Palmer House.

Q. Where is it situated?

A. At the corner of West Park and Alder.

Q. When was it you were interested in this hotel?

A. That was the year of the Portland fair; I don't recollect the year.

Q. Was or was there not in existence anywhere near this hotel at that time a restaurant known as Richards?

A. Yes, sir.

Q. Where was it situated with reference to the hotel?

A. Right across the street.

Q. What kind of a building is it?

A. A light-colored brick building.

Q. Have you been there since?

A. Yes.

Q. Do you know of it now?

A. Not lately; no, sir.

Q. How lately have you known of it?

A. I haven't been there within a year and a half.

Q. At the time you did know it until the time you last saw it what was the character of that place?

A. Well, the same as any high-priced, high-class restaurant.

Q. What was the class of people that resorted to it?

A. A good class of people.

Q. Respectable people?

A. Yes, sir.

Q. Do you remember the incident in 1906, just after the World's Fair, of the city authorities, under a new ordinance, taking out the boxes and private dining-rooms in all the restaurants and cafés in the city?

A. I recollect there was some kind of a moral wave there, and either the mayor or the council issued orders with reference to the selling of liquor in boxes, and Mr. Richards refused to comply with that order, and it became a battle with the city authorities and Mr. Richards as to whether he would comply with it; and I was interested in it because I was interested in a hotel, and they were right alongside of us, and there was a contest between the city authorities and the hotel

men as to whether he should obey that law or not, and they made a raid on the house at least twice, to my recollection—possibly more.

*Cross-Examination—*

By MR. MANAGER EDGE: Q. What is your present position, Mr. Madge?

A. Deputy insurance commissioner.

Q. Under Mr. Schively, in the office?

A. Yes, sir.

Q. Has your recollection refreshed about this matter in a very recent past?

A. Well, yes.

Q. You were down there about what time?

A. About '96. We bought in there just before the fair opened.

Q. You don't know anything about this escapade which resulted in the arrest of these people?

A. No, sir; not at all.

Q. You don't know what the reasons were that they were arrested?

A. No, sir.

Q. The people who took refreshments in the place didn't have any fight with the city authorities, did they?

A. No, sir.

Q. No reason why they should arrest people who were peaceably eating their meals there, was there?

A. Well, if a fellow got caught in the raid he would probably be arrested, I imagine.

Q. This was one of the best restaurants in Portland, you understand?

A. When I went to Portland ten years ago it was practically the only restaurant—

Q. Well, that is not the question. You testify under oath, as I understand, that this was a high-class restaurant in Portland?

A. Yes, sir, I do.

Q. You don't mean to tell the Senate why Schively was arrested there?

A. No, sir.

Q. You don't know anything concerning the transaction in which he was taking part at that time, do you?

A. No, sir, not at all.

*Re-Direct Examination—*

By MR. ISRAEL: Q. You do know that it was raided, and everybody in it arrested once or twice?

A. That is my recollection.

[*Witness excused.*]

Marvin Arnold, a witness called on behalf of the respondent, after having first been duly sworn, testified as follows:

*Direct Examination—*

By MR. ISRAEL: Q. What is your name?

A. Marvin Arnold.

Q. Where do you reside?

A. I reside here, but I live in Spokane.

Q. Were you connected in any way as an employee with the regular session of the legislature of 1909?

A. I was assistant secretary.

Q. Do you remember the insurance bill for the purpose of regulating and declaring and amending laws in connection with insurance departments—among other things, one of examining companies, before the legislature—commonly known as the Miller bill?

A. I remember it as the Miller bill.

Q. I will ask you whether or not in connection with that bill you were ever approached by Mr. Schively or Mr. Madge?

A. I was.

Q. What was their purpose, and what was said to you?

A. About the last week of the legislature there was a committee appointed in the Senate, called the rules committee, that segregated the bills and made up the calender. Mr. Laube, the secretary, prepared the list of bills for the printer. One evening I was on my way to the printing office; this was about the second day before the close, near the end, and I met Mr. Schively and Mr. Madge on their way home, and they had spoken to me several times about this bill, and they asked me if I had been able to speak to Mr. Ruth in regard to getting it on, and I came—and I told them no, and I came up and saw Mr. Ruth and he saw Senator Smith, and the bill was placed on the calender.

Q. Otherwise, it might have been lost entirely?

By MR. LEE: Now, I do not hear any response to that question, and as it is simply a conclusion, I move to strike the remark of counsel.

By THE PRESIDING OFFICER: Yes, I think so.

By MR. ISRAEL: Q. Do you know Mr. Evenson, of Spokane, the insurance man?

A. Yes, sir, I do.

Q. Do you know where his office was in 1906?

A. I do.

Q. Ever go to his office with John Schively?

A. I have.

Q. Was he in when you went there?

A. No, sir.

*Cross-Examination—*

By MR. LEE: Q. When did you go up—when did you go to Mr. Evenson's office with Mr. Schively?

A. The latter part of July or the fore part of August.

Q. What year?

A. 1908.

Q. That is when the examination was made, is it?

A. Didn't make any examination.

Q. Didn't make any examination?

A. No, sir.

Q. Do you know whether he made any examination at all or not?

A. He did not then.

Q. How did you come to go to that office with him?

A. I met Mr. Schively on the street.

Q. Where?

A. Spokane.

Q. What part of the street?

A. On the corner of Riverside and Howard.

Q. And you repaired to Evenson's office?

A. He asked me what I was doing, and I said "Nothing," and he asked me if I would go up there with him.

Q. Do you know whether Mr. Schively in his testimony before this Senate has said anything about your accompanying him there?

A. I didn't hear anything about it.

Q. You were lobbying around the Senate for the passage of insurance laws, were you not?

A. I was not.

Q. You were for this particular bill?

A. I was not.

Q. You were promised a place in the insurance department as actuary, weren't you?

A. No, sir; I was not.

Q. Wasn't it a matter of common knowledge that when Mr. Schively got the appropriation he was asking for that you would get a place in the insurance department of this state?

A. Yes, but not as actuary.

Q. Well, you were to get a position in his office, weren't you?

A. Yes, sir.

Q. Do you know whether or not the Miller bill, when it actually passed was any different from the existing law?

A. I don't know in regard to that.

Q. You know about a certain provision in the Miller bill, sometimes known as the joker, that says that when a special man was sent to examine a company outside of the insurance department's office he was to receive a reasonable compensation?

A. I don't know; I never read the bill.

Q. Don't you know as a matter of fact, Mr. Arnold, that this bill was never on the Senate calender?

A. I know it was on the Senate calender.

Q. You know that it was on the Senate calendar and was taken off that calendar at your request?

A. I spoke to Senator Ruth about it.

Q. Will you swear it was on the Senate calendar and that you got it taken off of that calendar?

A. I said I helped to get it put on—not taken off.

Q. Don't you know that when House bill 401, known as the Miller bill, came over from the House, that Senator Cameron had the bill called up and substituted for his bill?

A. No, sir; I do not.

Q. Would you state it was not a fact?

A. I don't know whether it was or not, but I went to Senator Ruth in regard to this bill.

Q. If it was a fact, you are mistaken in your testimony, aren't you?

A. I think my testimony is all right.

*Re-Direct Examination—*

BY MR. ISRAEL: Q. How late in the session was it that this conversation occurred?

A. It was around the third—it was within three days of the close of the last session—the 57th or 58th day.

[*Witness excused.*]

Mr. Sam A. Madge, a witness recalled on behalf of the respondent, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. Since having heard this cross-examination of eminent counsel regarding this bill, tell the Senate what you know regarding this transaction.

A. Early in the session, if you want the history of the bill—

Q. That is what I want.

A. Early in the session, when they were talking about this investigation, Mr. Schively said to me, "I want a bill passed here which will take out of this office the collection of any examination fees." But I said to him, "Well, you had better draft a bill," and he said, "I will do so," and he did draft a bill, or I presume he did, and he went to Mr. Lee here and asked Mr. Lee to draw the bill. Mr. Lee drew the bill. It was handed to Mr. Miller, I am quite sure, by Mr. Schively; if not, at least, by myself—No, it must have been handed to him by either Mr. Lee or Mr. Schively, because I went to look at the bill, and after I looked at it I discovered that they had neglected to provide for a fund and an appropriation that would permit that money to be drawn out again. I went to Mr. Miller and I think I saw Mr. Lee and talked with him in regard to it, and an amendment was drawn and substituted for the bill, when it was before the House committee. It was passed by the House, and then I took a copy of it and came to Senators Booth and Paulhamus, and either Senator Booth or Paulhamus raised the question that there was a joker in the bill. There was a provision in the bill that in case you had to employ outside help you shouldn't pay more than five dollars a day, and the same provision as was in the Bassett bill. It was no joker to my mind at all; it was a perfectly proper provision. But I said to Mr. Paulhamus, "If you object to that, cut it out; I don't care anything about it." They cut it out, and Senator Cameron had a bill that partially covered that, but covered another provision in regard to the depositing of all fees that come through the insurance department—having them all sent to the treasurer's office directly—which the department considered would be a very cumbersome proposition, and I went to Mr. Cameron myself and talked with him about it, and it may be if I did not with him, I did with Mr. Ruth; and I think that at Mr. Ruth's request Mr. Cameron substituted that House bill, because it was too late in the session to possibly get Mr. Cameron's bill through the House. It was the last day or the day before the last, and I urged very strenuously, and I met Arnold and asked him if it was on the calendar and I think he told me not, and I told him to go back to Ruth and ask him if it couldn't be placed on the calendar, in order that it might be passed.

*Cross-Examination—*

BY MR. LEE: Do you know that when that bill was presented to the attorney general's office of this state to be drawn that the attorney general's office knew nothing about what was desired, knew nothing about the insurance laws or their figures, in so far as the question before the legislature was concerned, and that bill was drawn at the suggestion of Mr. Schively?

A. I think that is true.

E. C. Brackett, a witness produced on behalf of the respondent herein, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. Brackett.



Q. What is your first name?

A. Earl C. Brackett.

Q. What are you doing now, Earl?

A. Elevator operator.

Q. Here in the building?

A. Yes.

Q. Were you elevator operator Saturday afternoon in the building?

A. Yes.

Q. Do you recall the circumstances of Mr. Donovan, the prosecuting attorney from Spokane county, coming off the gallery floor to the elevator Saturday afternoon?

A. Yes.

Q. Did you hear him say anything as he came into the elevator?

A. Yes.

Q. What did he say?

A. He said he wished he had told the facts in the first place, and there would not be any trouble now.

*Cross-Examination—*

By MR. MANAGER EDGE: Q. Did you have that conversation yourself with Mr. Donovan?

A. No, sir.

Q. Who did?

A. I don't know.

Q. Who else was in the elevator that heard him say that?

A. Two women in the elevator.

Q. What were their names?

A. I only know one.

Q. What was her name?

A. Mrs. Bragg.

Q. She heard the conversation?

A. She asked me what he said; I don't know whether she understood him or not.

Q. Nobody else understood?

A. Well, she got part of it. She heard him say he wished he had told the facts, and asked me to repeat it.

Q. You heard Donovan say that he lied here. Is that what you mean to say?

A. I do not mean to say that he lied here. He said that he wished that he had told the facts—that is what he told me—and there would have been no trouble now.

Q. He said he wished he told the facts and there would have been no trouble now?

A. Yes.

Q. Where?

A. I do not know.

Q. Who was he talking to?

A. He was talking to me.

Q. Are you sure that he said that he wished that he himself had told the facts?

A. Yes.

Q. What trouble did he mean?

A. I don't know.

Q. Who did you tell this to afterwards?

A. I did not tell anybody.

Q. How do you happen to be here testifying to it, then? Can you answer that? Why do you hesitate?

A. Mrs. — I don't know the party's name that got hold of it through Mrs. Bragg.

Q. Who got hold of it through Mrs. Bragg?

A. Arnold?

Q. Marvin Arnold?

A. Yes.

Q. Go ahead.

A. I don't know the party's name—the other party's name.

Q. Who did you tell it to?

A. I did not tell it to anybody outside of Mrs. Bragg.

Q. Where did you talk to Mrs. Bragg about it?

A. In the elevator.

Q. Donovan and Mrs. Bragg left the car at the same time?

A. No, sir. She left the car first. He rode up and down. He did not know where he was going.

Q. You turned around and told it to Mrs. Bragg, did you, while Donovan was there?

A. Yes.

Q. How did you happen to do that?

A. Because she asked me at the same time.

Q. Do you know Mrs. Bragg's city address?

A. No, sir.

Q. Do you know whether or not she lives in Olympia?

A. She does.

Q. Is she here in the building now?

A. I don't know.

Q. Have you seen her today?

A. Yes, this morning.

Q. Did you talk with her since about it?

A. No, sir.

Q. And that is the way those facts came into possession of the parties that asked you to be here?

BY MR. ISRAEL: The witness has not stated that.

BY MR. MANAGER EDGE: Q. How did Marvin Arnold happen to get mixed up in it?

A. I understood, through Mrs. Bragg.

Q. Did he talk to you about it?

A. No, sir.

Q. Who did?

A. There was no one talked to me about it outside of him.

Q. What did he say to you about it?

A. That is all. He asked me if—

Q. What?

A. What Donovan said; if there was anything in it; that was all.

Q. Have you repeated everything Donovan said?

A. Yes.

Q. And that was the only thing he did say, and he rode up and down several trips on the elevator?

A. Yes.

Q. What was his condition as to being sober or intoxicated?  
A. He seemed to be nervous and excited. I don't know whether he was sober.

Q. Could you find Mrs. Bragg now if a subpoena is issued for her?

A. I don't know whether she is in the building or not.

Q. Do you know where she can be found?

A. No, sir.

Q. How did you happen to get acquainted with her?

A. Why, I have known her for quite awhile.

Q. Where did you get acquainted with her?

A. Here in Olympia.

Q. In what way did you become acquainted with her?

A. I forget just where it was now. I met her through her husband.

Q. Did she live near where you did?

A. Next door. I am not familiar with the number.

Q. What is the number of your house?

A. I don't know.

Q. Do you mean to say you don't know where you live in Olympia?

A. I do not know the number of the house.

Q. Now, you say she lives next door to your house?

A. Yes.

Q. What is the number of your house?

A. I don't know.

Q. Is there a number on it?

A. Yes.

Q. What street is it on?

A. Columbia.

Q. What other street?

A. I do not know that.

Q. You don't know the next door your house is from?

A. No, sir, I don't.

Q. Then you don't know where Mrs. Bragg lives. Can you go out now and find her house?

A. I can go out and find it, yes.

Q. You talked this matter over thoroughly with the counsel and the respondent, Mr. Israel and Mr. Schively?

[No response.]

Q. Do you understand what I said?

A. They asked me this morning what Donovan said to me and I told them.

Q. Did they tell you how they got the information?

A. No, sir.

Q. Did they state whether or not Marvin Arnold had told them?

A. No, sir.

*Re-Direct Examination—*

By MR. ISRAEL: Q. I met you on the corner of this street, Sixth and Main streets, this morning, didn't I?

A. Yes, sir.

Q. The first greeting you got from me was, "Is your name Brackett?"

A. Yes.

Q. The next thing I said to you was what?

A. You asked me what Donovan had said to me.

Q. And the next thing I said was, "What did Donovan say in the car yesterday afternoon?"

A. Yes.

Q. And you told me?

A. Yes.

By MR. ISRAEL: I may inform counsel that Mrs. Bragg's husband is one of the employees of the building, and his wife is probably in the gallery at this moment, if they want her.

By MR. MANAGER EDGE: If she is, I would ask that the chair instruct her to remain, and it will save the formality of issuing a subpoena.

By THE PRESIDING OFFICER: Mr. Sergeant-at-Arms, will you ascertain if Mrs. Bragg is in the gallery, and if so have her come in here. Don't call her down now, because she is not wanted at this time. Ascertain if she is in the building.

[*Witness excused.*]

H. Perry Niles, a witness produced on behalf of the respondent, being first duly sworn, testified as follows:

*Direct Examination—*

By MR. ISRAEL: Q. What is your name?

A. H. Perry Niles.

Q. Where do you live?

A. Everett.

Q. Were you ever connected with the secretary of state's office?

A. Yes.

Q. When?

A. From 1901 to 1905.

Q. While you were connected with the insurance commissioner's office were you ever sent out to make examinations of insurance companies?

A. Yes.

Q. Who sent you out?

A. Mr. Nichols.

Q. What were your instructions when you went out to examine as to the amount of charges you should make?

A. He sent me to examine those companies, and the companies I would examine were designated. Some three companies, I think, only, when I went alone. There were two of them in Kansas and one in Richmond, Virginia. One of the companies in Kansas gave me one hundred dollars, and another one in Richmond, Virginia, gave me a check for two hundred dollars, drawn to Mr. Nichols. I brought it home and gave that check to Mr. Nichols, and he gave me the expenses for my trip.

Q. The money you had left you turned over to Mr. Nichols?

A. All over except the one hundred dollars that was given to me. I took it—that sum—for my expenses.

*Cross-Examination—*

By MR. LEE: Q. At that time the custom had not grown up of dividing with the man who actually made the examination?

A. I do not know anything about that.

Q. So, if there was any division of the spoils, it occurred after your administration?

A. I did not get any.

Q. You did not get in on that part of it. Now, this \$200 flat rate proposition was established at that time—to charge a flat rate of \$200 for examination?

A. I cannot say as to that. I got a \$200 check from that one company.

Q. Were you in the office, Mr. Niles, when Mr. Schively was deputy insurance commissioner?

A. Mr. Schively was deputy insurance commissioner from 1901 until 1905, while I was there, and he continued afterwards—after I left the office.

Q. As such, he had control of the department, largely?

A. The insurance department and the secretary's office were two different departments. Mr. Nichols and Schively had offices on one side of the hall, and the secretary's office was on the other side, in the old capitol. They moved into this building; the secretary's office was where it is now with the exception that the two rooms on this end were devoted to the insurance department.

Q. Mr. Schively had his clerk and his stenographer, and had no other office at that time?

A. After they got in here, yes.

Q. Was that while you were still here?

A. I was away—I was here until 1905, yes.

Q. At that time, after he moved into the new office, Mr. Schively was afforded control of the insurance department, as segregated from the others?

A. That was the insurance commissioner's—that was the department of insurance offices, to my mind.

Q. Mr. Schively was in control of them?

A. He was in there in those two offices.

*Re-Direct Examination—*

BY MR. ISRAEL: Q. You were not an employee in the insurance department?

A. No, sir; I had nothing to do with it.

Q. Your employment was in the secretary of state's office?

A. My employment was in the secretary of state's office.

Q. And Mr. Nichols took you out of the secretary of state's office and sent you to make examinations?

A. Yes, sir.

Q. More than once?

A. Yes.

Q. Did you go once with Tom Hickey?

A. In 1901 I went east with Mr. Nichols to make some examinations, and in either 1902 or 1903 he sent me alone. In 1904 he sent Mr. Hickey and myself east to make some examinations.

E. C. McDonald, a witness produced on behalf of the respondent herein, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. E. C. McDonald.

Q. Where do you live?

A. Spokane, Washington.

Q. What is your business?

A. Attorney at law.

Q. Do you know John H. Schively?

A. Yes.

Q. I will ask you whether you recall the circumstance of Mr. Schively taking you to the Pacific Live Stock Association office just after Charlie Murray had surrendered the receivership and Schrock had gone back into the possession of the company, for any purpose?

A. I do.

Q. Do you remember what purpose Schively expressed in wanting to go there?

A. Yes.

Q. What was the purpose?

A. Mr. Schively came to my office in the city of Spokane some time during the early part of 1907 and said to me that a report had been made by an expert accountant of the affairs of this Live Stock Association, and that this report showed that there was paid to him a considerable sum of money more than that actually received by him. He requested me to go to the office of the association with him to verify his statement that he had not received to exceed four hundred dollars per month for something like three months. We went to the office of the association, in the Fernwell building, in Spokane, and when we arrived there met a young man whom I was informed was a bookkeeper. I did not know him personally at that time, but I now think it was Mr. Hunter. Mr. Schively asked Mr. Hunter why he was charged with some \$1,200, and Mr. Hunter—if it was Mr. Hunter—stated that certain notes, known as the Ward notes, were charged to Schively's account, and he was informed at that time, either by the bookkeeper or Mr. Schrock, that these three notes of some four hundred dollars each, as I recall it, were charged to Schively's account, but as a matter of fact they had all been paid to Mr. Ward. At the request of Mr. Schively, Mr. Schrock produced those notes and submitted them to us, and I have not a very clear recollection of these notes, except that they were payable to E. R. Ward; but as to whether or not they had Mr. Schively's name on them I cannot say.

Q. The idea was not in your mind that they were Schively's notes?

A. The purpose of my visit there was to determine whether or not Mr. Schively received in excess of four hundred dollars a month, and whether or not he received this \$1,200 which it was claimed he had received.

Q. Had you satisfied yourself as to that mission?

A. I was fully convinced that this \$1,200 had not been paid to Mr. Schively, although entered on the books—charged to him—and that he did receive four hundred dollars a month for some three months.

Q. Now, under the finding of the indictment against Schively, charged with perjury, do you recall the incident of Mr. Schively bringing Mr. Schrock into your office?

A. I do.

Q. Can you recall what he brought him there for, and what he said when they came in?

A. I recall in a general way the conversation that occurred in my office at that time. It was—it is substantially this: Mr. Schively and Mr. Schrock came into my office, and, after the usual salutations, Mr. Schively said to me that Schrock stated that he had signed the so-called Ward notes and he brought him up to my office to discuss the matter with me. Mr. Schrock said that he did see Schively sign those notes. He said that after the notes had been signed—executed—Mr. Ward requested they also be signed by Schively, and for that reason he and Mr. Ward requested Schively to sign them, which he did. Mr. Schively

thereupon stated in substance that if such a statement were true he had no recollection of ever having signed those notes.

Q. I understand Schrock said that after the notes had been executed by this Live Stock Company?

A. I assumed so.

Q. Have you ever been able to get any trace of those notes since?

A. No, I have never seen them since.

*Cross-Examination—*

BY MR. MANAGER EDGE: Q. You do not know whether his signatures were attached to the notes?

A. My best recollection is those notes were executed by this Live Stock Company, but as to the other signatures I am not sure. The thing I was there for was to ascertain whether or not this money had been paid to Ward or paid to Schively. I am very well satisfied in my own mind that the notes were payable to Ward.

Q. You knew at that time the question was whether or not Schively had bought Ward out or the company had bought Ward out?

A. I heard that discussed.

Q. And it therefore became a matter of material inquiry to know whether or not the company gave the notes to Ward or Schively gave the notes to Ward?

A. I was there to determine whether or not Schively got this extra \$1,200 which it was said that he did get.

Q. And did you learn as to whether or not Schively's name was or was not on the notes?

A. I cannot say as to that.

Q. I understood that at this conversation that took place in your office after the indictments were returned Schrock told you that at the time the notes were signed Mr. Ward wanted Schively's signature on there in addition to the company's?

A. He did not use that word.

Q. What language did Mr. Schrock use, if you can remember, on that occasion?

A. As near as I can recollect, the language was substantially, if, after the notes had been executed, Ward requested they also be signed by Schively.

Q. Was there anything said about their being signed that night?

A. No, sir.

Q. You are counsel for Mr. Schively?

A. I am counsel for Mr. Schively in the matter pending in Spokane county, but not here. I am junior counsel for Mr. Schively at Spokane.

*[Witness excused.]*

BY MR. ISRAEL: I desire at this time to have read into the record the deposition of Charles Christensen, taken on the part of the defendant.

BY MR. LEE: Before that is read I want to know what is the purpose of it, what he testified, what portion of his answer or defense goes to establish; and I think I am entitled to know before registering an objection.

BY MR. ISRAEL: This deposition is one of thirty others that goes to this proof of the affirmative answer, that it is not true that this respondent has brought the State of Washington into great disrepute; I am reading paragraph 9 of respondent's affirmative answer: "That it

is not true that this respondent has brought the insurance department of the State of Washington into great disrepute both in this state and abroad, that his practices have been wrongful in any manner, or that any of his acts brand him as a corrupt and unworthy public official; but, on the contrary, your respondent avers that never in the history of the State of Washington has the said insurance commissioner's office been in higher or greater repute both in the State of Washington and elsewhere with all insurance companies doing business in the State of Washington; and that said insurance companies have practically indorsed the said department as one of the best administered in any state of the Union, and that under the administration of your respondent, since taking said office, the revenues of said office have been increased so that at the ending of the first six months of your respondent's administration the same are over forty-two thousand dollars in excess of the entire earnings of such department during any complete year during its existence. And at the present time the condition of the insurance companies operating in the State of Washington, in relation to their liability to the insuring public, is better than the same ever was in the history of the State of Washington."

Now, among the things contained in the report of the committee, which is set up in this answer in Exhibit "A," the committee reported that for eight years after—ending January 10, 1909—(referring to Schively), "that his wrongful, arbitrary and unwarranted conduct, as set forth in the above findings, was not only highly reprehensible, but extremely injurious to the interests of the insuring public in this state; that his gross neglect of official duties has caused insolvent, irresponsible and fraudulent companies to flourish and prosper for a time; that his failure to perform the duties imposed upon him by the insurance laws shows him to be incompetent and inefficient, and has brought the insurance department of the State of Washington into great disrepute, both in this state and abroad." While it is not specifically made one of the articles of impeachment, all through the impeachment, they run the words, "and was guilty of high crimes, misdemeanors and malfeasance in office"; and this is one of the malfeasances incorporated in this article of impeachment. Now, I desire to have the benefit—I think I am entitled to have the benefit—of the opinion of the insurance world as to the standing of this department at the time he was so charged.

By MR. LEE: The objection to the introduction of this deposition and several others is for several reasons. I have some statements I want to make before you determine this matter. In the first place, this defendant is presumed to enter this chamber with a presumption of innocence, both personally and officially. There is not a scintilla in these articles of impeachment to the effect that this department is in great disrepute abroad. It is elementary that if they desire to introduce anything here on an affirmative or any other defense, it must in some way concern the articles of impeachment. I want to say that at the time these depositions were asked for, Mr. Israel himself said



then and there they were asked for the purpose of anticipating amended articles of impeachment, charging that this office was in great disrepute, and that was the understanding then and there had with him. Now, my objection is that they are absolutely incompetent, irrelevant and immaterial, and have absolutely no bearing upon the issues in this case, according to all the elementary rules of law. The articles of impeachment—I do not care what the investigating committee may do. We are here trying on a number of specific offenses.

BY THE PRESIDING OFFICER: You have not made it clear to me that these depositions are in any way relevant. They are introduced to establish the character of the office.

BY MR. ISRAEL: The official character of the commissioner. This man is being tried upon his official character, your honor.

BY THE PRESIDING OFFICER: My understanding is that where you attempt to prove character, the testimony must follow the successive date related to the act charged. I cannot see wherein this deposition, if that is the purport of it, can effect any issue that is involved in the pleading here.

BY MR. ISRAEL: Let me make this suggestion to your honor; that during this day's examination—the whole session of the court, one whole day of the cross-examination lapping over into another—of Mr. Schively was consumed and that they have constantly berated him with the character of their question as to the inefficiency, non-attention and mismanagement of his office, for the purpose of fixing him and stamping him as not only corrupt, but engaged in a reprehensible practice of extorting money from these various insurance companies. Now, if we are here trying him for an individual offense, directed to him as an individual, with reference to any of the acts of his life, he can introduce as many witnesses as he sees fit as to his good character in the community where he lives, and there should be no question about it. Now, if these depositions seek in the same manner to establish his official character, his official good reputation, among these people who know him individually, that is the purpose of it.

BY MR. LEE: Mr. President, I have just one further objection and then I will not consume any further time, and that is this: that counsel's last objections are to the effect that these depositions go to answer Mr. Schively's testimony on cross-examination. His first statement was to the effect that they go to the support of an affirmative defense. Now, I submit to you, Mr. President, and to you senators, suppose the governor of this state or the attorney general or any other state officer were on trial for embezzlement, or murder, if you please, or, perhaps, a little more appropriate, some crime involving moral turpitude, what difference does it make whether that department has been in good standing from the present until the very last day of the administration.

BY MR. ISRAEL: Well, the department could not commit murder, and you seem to have omitted your metaphor. Suppose I ask this ques-

tion: What right, if he were on the charge of murder, would he have to produce witnesses as to his good moral character?

By Mr. LEE: Do you want to talk?

By Mr. ISRAEL: I am interrupting you because it is your close.

By Mr. LEE: Now, I don't want any personalities in this matter. I want to be particularly clear, but I want to submit this matter on the proposition of law and justice, and not to encumber this record with superlatives. Now, suppose it be admitted—taking the strongest possible view of this matter—suppose it was admitted that the insurance department of the State of Washington is and has been in good repute. Does that in any way tend to condone such offenses which are alleged to have been committed in violation of the constitution and laws of this state? And I say to you, gentlemen, that when you come to reduce it to a practical analysis, you will observe that this is not only irrelevant, but absolutely immaterial to any issue here. And I say it, as an elementary rule, and counsel knows it, that every paragraph of the answer must either deny or admit some paragraph in the complaint or articles here, or it must establish some affirmative defense which goes to show that the actual offenses in the article were or were not committed. Now, does this affirmative defense in any way tend to show that the alleged offenses charged in the articles of impeachment were or were not committed? They could be committed and still the department would be in good repute. And I submit to you that inasmuch as this man enters this chamber with the presumption of innocence in his behalf, both personally and officially, I say to you that that presumption cannot be overcome by such testimony or supported by such testimony. We have no particular objection as to the contents of these depositions, so far as I am advised—and I have not read the depositions. The cross-interrogatories which were admitted at that time may be favorable—I don't know. But I do now say to you, senators, that if this class of evidence is to be admitted at this time, it will not only encumber the record, will not only consume your time, will not only befog the issues, but will in no wise help you to determine whether or not J. H. Schively did the things charged against him in the articles of impeachment. If it would in any way tend to establish his guilt or his innocence as to those particular articles, then I would be more than glad to have them admitted.

By Mr. ISRAEL: Mr. Chairman, I want to add a word to the managers stepping upon the broad ground occupied by counsel in his closing argument. If you don't think it will aid you in any way at all to know how your insurance department stands and has stood throughout the United States during the time of the charges in these articles, I will withdraw them. But it seems to me out of the gentleman's mouth he confesses the relevancy of these depositions. The Senate ought to know how its insurance department has stood during the time that the commissioner is charged with malfeasance. If the Senate does not wish to hear them, I will withdraw them, but I hope the Senate will hear these depositions, and I want to say also that, like

counsel, I have not read one of them—have not read three of them—I have read one of them.

BY THE PRESIDING OFFICER: The chair has announced the position it will take. I am satisfied that under the rules of law these depositions are not relevant to any issue involved; that this is a part of the defendant's proof which he has submitted; but I don't want to be arbitrary about this. I shall myself hold that the objection shall be sustained, and if the members of the Senate wish to take a vote on the matter they can do so.

BY SENATOR KNICKERBOCKER: Mr. President, if it is necessary, I will move that the articles be read, so as to get them before the Senate, if that is what is desired, or so many of them as should be read.

BY SENATOR WILLIAMS: Mr. President, in seconding the motion that the articles be read—

BY THE PRESIDING OFFICER: The rules provide that one-fifth can refer this to the house, and it will require nine senators to arise to refer it. If there is not that many who desire to submit it, of course it cannot be submitted. If nine senators will arise, I will be pleased to have roll call on the question.

BY SENATOR ALLEN: Mr. President, what is the ruling of the chair?

BY THE PRESIDING OFFICER: The ruling is that the objection is sustained. That is the ruling that I have made. It takes one-fifth of the members under the rule, but if one-fifth do not care to vote on this question, there is no need of taking up the time of the Senate. If one-fifth, or nine members, will arise, we will submit this ruling to the Senate. [*The secretary counts five members who arose.*] I construe the action of the Senate then to be favorable to my position. We will exclude these depositions. Are they all of the same purport?

BY MR. MANAGER MEIGS: Yes, just the same.

L. M. Holden, a witness produced for and on behalf of the respondent, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. L. M. Holden.

Q. What is your business?

A. Insurance business.

Q. Where are you engaged in business, Mr. Holden?

A. Tacoma.

Q. How long have you been engaged in business there?

A. Ten years.

Q. Have you any agents under you?

A. Yes, sir.

Q. You are general agent, are you not?

A. I am— No, I am secretary of the company.

Q. Secretary for an insurance company?

A. Yes, sir.

Q. Are your agents compensated on a flat salary or commissions?

A. Commissions.

Q. Do you know the general agent of the Title Guaranty & Surety Company?

A. I know the agent. I don't know whether he is the general agent or not.

Q. I don't mean general agent. How long have you had charge of agents?

A. I have had agents under me for the last ten years.

Q. During that time have you made any attempt to bond them on a commission basis?

A. I have.

Q. Did you ever succeed in bonding any?

A. Never.

Q. Did you ever know of any bonding company that you did not try for a commission bond?

A. I think I have tried every one of them.

Q. I will ask you whether lately you have tried the Title Guaranty & Surety Company, of Scranton, Pennsylvania, for a bond to bond agents on a commission basis?

BY MR. MANAGER EDGE: I object to that, unless he fixes it to the time to which he claims this testimony refers. The present attitude of the company is not admissible to show what they did at the time that counsel seems to be directing to.

Q. Were you in the insurance business in 1906?

BY THE PRESIDING OFFICER: The objection is overruled. Don't ask a new question. Read the question. [*Last previous question read.*]

A. Why, no, I don't think very lately I have asked. I have had an assistant in the office, Mr. Griffin, and I gave him instructions to see all the bonding companies.

Q. Have you had occasion yourself in the past few years—last two or three years—to discuss with the Title Guaranty & Surety Company as to bonding an agent upon a commission basis?

A. Yes.

Q. What was the result?

A. I could not get a bond.

Q. Why not?

A. They don't bond agents on a commission basis, was their excuse.

*Cross-Examination—*

BY MR. MANAGER EDGE: Q. Well, do you know whether or not they bond officials of companies who are working on a commission basis?

A. I could not say anything about that.

Q. You don't know about that and you don't know what their practice was in 1906—of that company—do you?

A. No, only in a general way.

Q. Then you will not testify that in 1906 this Title Guaranty & Surety Company would not accept bonds on officials of companies who were working on a commission basis?

A. No, I would not.

Q. I say you will not testify that they would not at that time?

A. No, I would not.

[*Witness excused.*]

Morton Gregory, a witness produced for and on behalf of the respondent, being first duly sworn, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. Morton Gregory.

Q. Where is your place of business, Mr. Gregory?

A. Tacoma.

Q. What business are you in?

A. Life insurance.

Q. How long have you been in that business?

A. Something over two years at present business.

Q. Have you any agents working under you?

A. Yes.

Q. Are you a general agent yourself?

A. No.

Q. Just an agent?

A. No, I am vice-president of the company.

Q. As vice-president of the company, have you any occasion to attempt to bond any of your employees on a commission basis?

A. I have.

Q. What were the results?

A. Unable to do so.

Q. Why?

A. Why, they have refused to take any agents on commission.

*Cross-Examination—*

BY MR. MANAGER EDGE: Q. You have attempted to do so?

A. I have.

Q. Have you ever made out any applications for any?

A. I never have. I have made out the applications, but—I think I made out one at Tacoma.

Q. The company turned it down?

A. The agent turned it down; would not send it in.

Q. That was after the application was made out?

A. Yes, sir.

Q. You don't know whether or not in 1906 this company about which testimony has been introduced, operating at Scranton, Pennsylvania—you don't know whether or not that if you would have advanced an official of the company to be bonded, it would have bonded him working on commission, do you?

A. I would have to know who the agent is. I am not fully familiar with the names of all of the companies handled by its agent. I know some of them.

Q. I don't think you understand the question I asked you. I asked you if you are willing to swear now that that company would or did not in 1906 bond officials of companies who received commissions?

A. Well now, the reason I answered that question that way was this: That I have been to see agents; that I don't remember just which one was connected with each company.

Q. Well, to make a long story short, you don't know what kind of a bonding business this particular company was doing in 1906?

A. No.

Q. Whether they were bonding people on a commission or salary or anything else, do you?

A. I only know what agents have said to me.

Q. And you have talked with the agents of that company?

A. I don't know whether the agent of that company or not.

By MR. ISRAEL: Suppose it was Allen, of Tacoma. That is who the agent is.

By MR. MANAGER EDGE: He will do the testifying just now.

Q. And you don't propose to tell, then, to the Senate under oath whether or not this company in Scranton, Pennsylvania, wrote bonds for the officials of the Live Stock Company in 1906?

A. I do not.

*Re-Direct Examination—*

By MR. ISRAEL: Q. Do you know Mr. Allen, of Tacoma, in the bonding business?

A. I know him by sight.

Q. Did you ever have any dealings with his companies, looking for bonds?

A. I think he is one of the men I spoke to.

Q. If he is the agent of the Title Guaranty & Surety Company, of Tacoma, then they were not bonding on a commission in 1906?

A. I don't know what they were doing. They refused to accept my men. That is all I know.

*[Witness excused.]*

By MR. ISRAEL: I will say to your honor now that if you will take a short recess we will probably conclude.

By THE PRESIDING OFFICER: We will take a recess for ten minutes.

By MR. ISRAEL: If the court please, with the exception of Mr. Chas. Dyer, who is on his way from Seattle with the records of the general office—general agency—of the Title Surety & Trust Company of 1906, the respondent is ready to rest his case, and I would ask permission, so as to not be cut out of that testimony, and still not desiring under any circumstances to recess this body for a single minute on account of it, that I be allowed to put that witness on the stand after the rebuttal, in case the rebuttal takes all the afternoon. Of course, if the rebuttal does not take all the afternoon, I will not ask the Senate to wait on this testimony. But with that exception we rest.

By MR. MANAGER EDGE: That is perfectly satisfactory.

By SENATOR FALCONER: If I may take a minute of the time of the court, my attention has been called to the case of Marvin Arnold, of Spokane. Now, it appears that Mr. Arnold gets \$100 a month from the state and is in the employ of the state, but at the present time is in Spokane, and he has charged mileage here and witness fees in the sum of eighty some dollars on his trip from Spokane to Olympia. Now, it appears to me, off-hand, and I think it may possibly appear so to the other senators, that this is crowding the issue a little too far for Mr. Arnold to come here and get double pay, and I want to make a motion now that the secretary be instructed to notify the state auditor not to recognize the draft for Mr. Arnold.

By SENATOR STEVENSON: I would like to qualify that, and if the gentleman will so qualify by stating until such time as the matter may be looked into, I will second the motion.

BY SENATOR RUTH: Mr. Arnold was summoned here, subpoenaed in Spokane. If that is the case, he is clearly entitled to his mileage, as much so as any other witness from Spokane, and I think he can legally collect his witness fees and his mileage.

BY SENATOR COTTERILL: If the facts are as stated by Senator Ruth, the committee will undoubtedly investigate this and so report.

BY THE PRESIDING OFFICER: I understand that the motion is that the treasurer be instructed not to pay this until the matter can be further investigated—this particular charge of mileage. Are you ready for the question? Those in favor say "Aye." The ayes have it.

BY SENATOR RUTH: I ask for a division.

BY THE PRESIDING OFFICER: Those in favor will please arise and stand until counted. The motion is carried. Mr. Sergeant-at-Arms, will you please see that the treasurer is instructed by a vote of this court to delay honoring the draft on the treasury of the state issued to Mr. Arnold, until further report from this court.

BY MR. ISRAEL: Mr. Chairman, or your honor, I want to say in addition to the committee that makes the report, that they may understand the way in which Mr. Arnold came here as a witness for the respondent, that I issued a subpoena on information that Mr. Arnold was away in Spokane on his vacation, and I issued a subpoena for him and that is all I know about it.

BY THE PRESIDING OFFICER: It is possibly better now to determine who is to investigate and report.

BY SENATOR ALLEN: I move that the matter be referred to the Committee on Salaries and Mileage for the Senate.

BY THE PRESIDING OFFICER: The motion is made and seconded that this matter be referred to the gentlemen who constitute the Committee on Salaries and Mileage of the Senate. Are you ready for the question? Those in favor say "Aye"; opposed, "No." Motion carried.

E. R. Ward, having heretofore been sworn, called on behalf of the state in rebuttal, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. Mr. Ward, you heard the testimony of Mr. Schively in reference to your meeting him in Portland—whether by appointment or otherwise. Just state whether or not the appointment was made to meet him there; state it as briefly as you can and state it so every one can hear.

BY MR. ISRAEL: Now, I object to this testimony, as incompetent, irrelevant and immaterial, for the reason that it is not rebuttal. This witness can testify to anything that is simply to the rebuttal as to what his (Schively's) attention was directed to on the witness stand. This witness testified all about his meeting with Schively in Portland.

BY THE PRESIDING OFFICER: It is certainly not rebuttal testimony.

BY MR. MANAGER EDGE: As I do not care to take the time of the Senate, I will proceed.

Q. You heard the testimony of Mr. Schively on the witness stand to the effect of his receiving or not receiving money from you in Portland; you heard that testimony?

A. Yes.

Q. What are the facts as to that transaction?

A. Well, the facts are that I gave Mr. Schively a check for \$150—my personal check.

Q. For what purpose; how did you happen to give it to him?

A. Well, the fact of the matter is, he sent a messenger boy up in the morning to where I was stopping on Tenth street—I and my wife—with a note asking me to come to the hotel Emperial, I think it was, I believe is the name—to see him, and I went down to see him and he told me he had gotten into some trouble and needed some money to help him out, and wanted \$150, and I gave him a check for it.

Q. Did he ever repay it to you?

A. No, sir, he has not.

Q. That wasn't given for any insurance fee of any kind.

A. Absolutely was not. It was a personal check; had nothing to do with the Pacific Live Stock Association in any way.

Q. Did he say what he wanted to use the money for?

A. Yes, he had gotten into trouble and had been to some cost and wanted to pay out.

Q. You heard Mr. Schively's testimony on the stand that he, in conversation with you, you stated to him that you wanted to sell out and he said the company would probably buy you out and he brought you and Schrock together; is or is not that true?

A. As to there being any arrangement with Mr. Schively in any way with me to see Mr. Schrock or any other officer of the company, to make any arrangement for the company to buy me out, it is absolutely untrue in every sense of the word. Mr. Schively knows it. There was nothing to that effect in any way said—no arrangement made whatever, and Mr. Schively absolutely bought me out and gave me the notes for it.

Q. Did you ever have any conversation with any member of the company in reference to the company or anybody other than Mr. Schively buying you out?

A. Absolutely none. None of the company there talked of buying me out, and the company couldn't have bought me out. I wouldn't have sold out to the company, and accepted the money in that way.

Q. You heard some testimony here in reference to different officers of the company giving bonds for the performance of their duties, and so on, during the summer of 1906; you heard that testimony?

A. Yes.

Q. I will ask you whether or not during that time you had furnished any bond to the company or were under bond?

A. I was under bond, yes. Also, I think all of the officers were and nearly all the agents after a certain period. Our agents on the start weren't all bonded. Very few of them were asked to give bonds, but quite a number of our agents had written insurance, and you might say skipped the country and left the general man in charge of that territory responsible, and so we passed a resolution that our agents, both the general and sub-agents, should be bonded.

Q. Were these agents paid on a salary or commission basis?

A. All on commission basis.

Q. Who paid the premiums on the bonds, if you recall?

A. If I remember now, the company paid the premiums.



Q. Do you remember through whom you did the business at that time, 1906?

A. I can't remember the bonding company's name.

Q. Did you ever see Donovan around there in reference to bonding matters?

A. No, I never did.

Q. Do you remember the name of the office in Spokane that made the application with you—that you made the application through?

A. The name of what?

Q. The name of the office in Spokane?

A. I know where the office is, but I don't remember the name of the bonding company. I didn't have anything to do with the management of the company. I was in the field most of the time, and Mr. Hilliker was general manager.

Q. How much was your bond?

A. I think it was \$5,000. I am not sure.

Q. And at the time you gave the bond, were you on salary or commission basis?

A. I was on a commission basis; also all of the officers. There was no one in our company on anything else but a commission or millage basis. If we wrote nothing, we got nothing.

Q. These sub-agents were bonded on the same basis?

A. Yes, sir.

Q. And they had the same kind of bonds?

A. Yes.

*Cross-Examination—*

By MR. ISRAEL: Q. John Schively bought you out in Spokane for \$1,200?

A. Yes, sir.

Q. The deal was between you and John Schively?

A. It absolutely was.

Q. The company had nothing to do with it?

A. Absolutely nothing to do with it.

Q. Absolutely a personal matter between you and John Schively?

A. Yes.

Q. Purchase price was \$1,200?

A. Yes.

Q. And you took Schively's notes for the \$1,200?

A. Yes, sir, with the understanding with the company that Mr. Schrock and the officers—that they would see that I got my money.

Q. That the notes were paid?

A. That the notes were paid.

Q. See that Schively's notes were paid? Schively rang you up in Portland and had you come to his hotel, and told you he was in trouble—broke, and needed \$150, and you gave it to him?

A. I gave it to him; yes.

Q. And he never paid it?

A. No, sir; he has not paid it.

Q. When Schively bought you out in Spokane for \$1,200, and you sold out for \$1,200, and you were closing out to Schively, why didn't you include the \$150 that Schively owed you with the \$1,200?

A. Well, I spoke to Mr. Schively about it and he thought that ought to be a donation from me.

Q. That is your explanation of it, is it?

A. Yes.

[Witness excused.]

J. B. Schrock, having heretofore been sworn, was recalled on behalf of the state and testified as follows in rebuttal:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. Mr. Schrock, about the time Schively was connected with the company, state whether or not you were under any kind of bond as an officer of the company?

A. I was.

Q. How much, if you remember?

A. Eight thousand dollars.

Q. Were you at that time working on a commission or salary basis?

A. I was working on a commission basis.

Q. Never worked on any other kind of basis?

A. Never.

Q. Do you remember through whom you did the business in Spokane?

A. We did the business through the Downs-Wheeler Company. They were agents for a bonding company; I think it was the Title Guaranty & Surety Company.

Q. Did the company know when they wrote those bonds, or did you give them to understand, you were on a commission basis?

A. Yes, sir.

Q. State whether or not Mr. Donovan was ever around your office with reference to the bonding business?

A. He was.

Q. You heard the testimony of Mr. Schively on the stand to the effect that he brought Ward to you for the purpose of having the company buy Ward out; is or is not that the fact?

A. That is not the fact.

Q. You heard Mr. Schively testify on the stand that those figures on the bottom of that statement were dictated by you to him and he wrote them and did not know what they were for; did you hear that statement?

A. I did.

Q. Is it or is not that true?

A. Not to the best of my recollection.

Q. Something was said about some money that you owed Mr. Schively in settling up—\$30—in a personal account; was that a personal account or what was it? Did you borrow some money from him?

A. If I ever borrowed a dollar of Schively, I don't know of it.

*Cross-Examination—*

BY MR. ISRAEL: Q. You don't know, and you won't say, that you did not; you do not say that you did not?

A. If I ever borrowed a dollar from Schively, I don't know it.

Q. You were before the grand jury, Mr. Schrock?

A. I certainly was.

[Witness excused.]

F. G. Copeland, being a witness heretofore sworn, recalled on behalf of the state, testified as follows in rebuttal:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. Mr. Copeland, you were an officer connected with the company about the time Mr. Schively was connected with it?

A. Yes.

Q. I will ask you whether or not at that time you were under any bond to the company?

A. Yes.

Q. Do you remember how much it was?

A. I think it was \$3,000; I wouldn't be sure about that.

Q. Was it a bond furnished by a surety company, do you recall? What I mean is this: did some personal friends of yours go on the bond or did some surety company furnish it?

A. Some company.

Q. Do you remember who you did the business through?

A. No, I do not now.

Q. Do you ever recall seeing Donovan around there in reference to bonding business?

A. Yes, I have seen him there.

Q. Were you on a commission or salary basis at the time you gave a bond?

A. Commission basis.

*Cross-Examination—*

BY MR. ISRAEL: Q. Who filled out the answers to the questions on the application blank for the bonding?

A. Well, I don't remember whether I did it myself or Mr. Shallenberger did it.

Q. Did Shallenberger make out all of those applications?

A. I don't know.

Q. Well, isn't that your best recollection that Shallenberger made out all of your applications and you signed your names to them?

A. Well, I couldn't say as to that.

Q. Isn't that your best recollection of it?

BY MR. MANAGER EDGE: Now, he has answered the question.

BY MR. ISRAEL: Q. You have an idea that Shallenberger might have done it?

A. He might have made out mine.

Q. Do you remember how you answered the question in the application as to what salary you were receiving?

A. No, I don't.

Q. Do you remember answering this question, "What salary or compensation will you receive?"

A. No, sir, I don't remember.

Q. You have no recollection of the questions you answered?

A. No, sir; I couldn't tell exactly what the form was.

Q. You don't know whether you answered you were on a salary of \$600—\$400 a month or not, do you?

A. I didn't answer I was on a salary.

Q. Did you answer a question like this, "What salary or compensation do you receive?" by saying \$400?

A. No, sir, I didn't answer it that way.

Q. Do you remember your saying you were on a commission basis?

A. No, sir; but I must have said I was on a commission basis.

Q. Why must you have said so?

A. Because I was.

Q. Well, would you have had to say, "I am on a commission basis," in answer to this question, "What salary or compensation do

you receive?" rather than to say "\$400 a month"; would that have been the natural answer?

A. Yes, I think so.

Q. Well, I think it would be, too. Just look at this Title Guaranty & Surety Company application for a bond of an employee and see if that looks anything like the paper you signed?

A. Well, I couldn't tell you, Mr. Israel; it has been so long I couldn't tell you.

Q. You don't remember anything about it?

A. Whether that is the blank or not?

Q. Yes?

A. No.

Q. You don't remember anything about it; you don't know what you did state as to how your compensation was paid?

A. I know I was on a commission basis.

Q. Yes, but you don't know what answer was made as to your compensation in this application?

A. Why, I must have answered I was on a commission basis.

Q. You could have answered the question; you just told me so when you were asked what your compensation was?

A. No, I couldn't.

Q. You have no distinct recollection now as to what you did answer?

A. I have no distinct recollection of the blank. I don't know whether that is an exact copy or not.

Q. You have no distinct recollection of answering the question in which you said you were on a commission basis; if you have, we can conclude this in a moment?

A. I don't understand.

Q. Do you remember, as you sit in that chair, that when you applied for a bond, you stated in the bond that you were working on a commission; do you remember that independent fact right now?

A. Well, I know I was on a commission—

Q. Well now, we will cut that out, whether you know that or not, you do now remember that you did answer that way?

A. Why, I couldn't be certain of it.

Q. No, of course you couldn't.

*Re-Direct Examination—*

By MR. MANAGER EDGE: Q. But you do remember you were on a commission basis at that time, and if that question was asked you that would have been the answer you would have given them—that you were.

By MR. ISRAEL: I object to that as leading and suggestive.

By THE PRESIDING OFFICER: The objection is sustained.

[*Witness excused.*]

Mr. Donovan, being a witness heretofore sworn, called on behalf of the state in rebuttal, testified as follows:

*Direct Examination—*

By MR. MANAGER EDGE: Q. Mr. Donovan, the testimony here a few moments ago—When was that, Saturday or the day before—I have forgotten the date.

By MR. ISRAEL: You mean the episode in the elevator.

BY MR. MANAGER EDGE: Yes, when the gentleman left the gallery.

BY MR. ISRAEL: You mean when he left the gallery and went down in the elevator and said that he wished that he had stuck to the facts of the case?

BY MR. LEE: Now, I object to that. We know all about that. Counsel has no right to re-state it.

BY MR. MANAGER EDGE: Well now, let me examine this witness, please?

Q. Mr. Donovan, there is some testimony here that yesterday afternoon, while you were going down in the elevator, in the presence of the elevator boy and some other parties there—the testimony is that you made a statement there that if you had told the truth in your proceedings in here, none of this trouble would have occurred.

BY MR. ISRAEL: Pardon me, Mr. Edge, you are not putting it in the words of the elevator boy at all.

Q. I will ask you if you remember what you did state, or whatever you stated; was it that you yourself had misstated the facts in here?

A. I certainly did not to the elevator boy or any other person make any reference to any misstatement of fact on my account, or by myself.

Q. If anything was said about any misstatement of fact, who did you have reference to?

A. I had reference to John H. Schively—that if he had testified before the grand jury as to the facts as they were that this would never have occurred here, the charge against him for perjury.

*Cross-Examination—*

BY MR. ISRAEL: Q. Were you drinking any yesterday, Mr. Donovan?

A. Beg pardon.

Q. Were you drinking any yesterday—any intoxicating liquors?

[No response.]

Q. Were you drinking yesterday to an extent to be at all intoxicated?

A. No, sir.

Q. Were you sober when you left the floor of the Senate?

A. Yes, sir.

Q. Were you sober when you went into the gallery?

A. Yes, sir.

Q. Were you sober when you went into the elevator?

A. Yes, sir.

Q. Why did you ride up and down three or four times in the elevator?

A. Because the elevator man was busy taking passengers from the basement to the floor, and I simply sat in the elevator with him during the elevation.

Q. Riding in the elevator. You rode up and down in the elevator with him three or four times?

A. No, sir, I did not. He passed the floor once, and I waited, of course, until he got—

Q. You did make the remark, "I wish I had stuck to the facts and there would not have been any of this trouble?"

A. No, sir, I did not.

Q. That is all?

A. I wish to say that the elevator man passed the floor I had wished to get off on, and for that reason I remained in the elevator, because I could not get out.

Q. You did not go back up to the gallery floor and try it all over again?

A. No, sir.

[*Witness excused.*]

BY THE PRESIDING OFFICER: Does either side want Mr. Donovan any more?

BY MR. ISRAEL: I would like Mr. Donovan to come back one moment.

[*Mr. Donovan resumes the stand.*]

Q. When you were on the witness stand last week you claimed to have had a 1906 license to solicit insurance in the State of Washington, issued by the 1906 insurance department; you had afterwards testified you had examined that department and been unable to find any record of it. I asked you where it was, and you said Spokane. I asked you to send for it or go and get it. I would like to know whether you got it?

BY MR. MANAGER EDGE: I object to that. That is not proper rebuttal. The matter has been thoroughly threshed out.

BY THE PRESIDING OFFICER: The gentleman can explain what he has done in the matter of getting the proof—

Q. Have you your license now, Mr. Donovan?

A. The license is in my private files at home, so far as I know.

Q. You did not consider it of sufficient importance, after I made the request last week, to go to Spokane and get it?

A. No, sir, I did not—not because I did not want to comply with your request, but because I did not have the funds furnished me by you to go there and get it.

Q. Do you think it was necessary for me to furnish the funds to prove and vindicate your own statement that you had examined the insurance department and found there was no record of it?

A. No; but I was not going to Spokane at my own expense for the purpose of getting for you that which should be in the insurance department.

Q. It is not there? You satisfied yourself?

A. I have not satisfied myself it is not there.

Q. You went and made an examination?

A. I went and made an examination, yes; but I understand, and I have understood, that J. H. Schively has from time to time furnished these licenses and took the money himself and made no record of it.

Q. That is some more of your “pan-tan” muck-raking?

A. It is not “pan-tan” muck-raking, but it is what I understood and what I have understood from the time I have known anything of John H. Schively.

Q. You love John H. Schively?

A. I have no personal regard against him—no personal feeling against him.

Q. You only wanted to crucify him—

BY MR. LEE: I object to this discussion and harangue.

BY THE PRESIDING OFFICER: Yes, that is right. You are excused, Mr. Donovan.

BY MR. MANAGER MEIGS: Do you want to excuse Mr. Donovan, Mr. Israel?

BY MR. ISRAEL: I have no use for Donovan; let him go.

Ben F. Davis, a witness produced on behalf of the complainants herein, having been heretofore sworn, now being called in rebuttal, testified as follows:

*Direct Examination—*

BY MR. MANAGER EDGE: Q. Have you heard the testimony of Mr. Schively in reference to the matter in which he claims that the grand jury tortured him while he was testifying before it? Just give the Senate the facts bearing upon that torture, as he claims.

A. I do not believe there was a witness before the grand jury that got as much latitude as we gave Mr. Schively. Even after I had told him we were through with him, he sat there and kept asking me if I wanted to ask him any more questions, and I told him no, that we were through with him. He asked that two or three times, and finally I said to him, "Mr. Schively, we have given you more latitude than we did any other witness, but if there is anything more you wish to testify before this grand jury, or wish to make a statement, then you have the privilege to do so now." He said he did not want to testify, only that he wanted to answer any questions that might come up in our minds, and I told him there were no more questions to be asked him by the grand jury.

Q. Did you at any time refuse to permit him to make any explanation in connection with any transaction to which he was testifying?

A. I had to call him down, the same as his own counsel has done here. He would ramble off the subject, and I told him that he would have to keep to the subject and to the questions asked. He did it several times, but one time Mr. Donovan objected about his testifying in a certain way, and I overruled his objection, and there was another ramble off from the questions that were asked.

Q. Did he ever indicate that he might possibly have been intoxicated at the time the notes were given?

A. No, sir, he did not.

Q. There is some testimony here in reference to the grand jury forcibly taking some papers away from him and turning him out without them. Just give the Senate the facts concerning that transaction.

A. I believe in the subpoena he was instructed to bring over some papers, but the papers were not the ones that we expected to get, and when he laid the papers down he said, "Here are my papers." Mr. Donovan asked him if we could keep them, and he said, "Certainly"; but if I remember correctly, the papers were not what we wanted, and I do not even remember of looking at them, because they were not the papers that we wanted—that we expected to get.

*Cross-Examination—*

BY MR. ISRAEL: Q. Why did you not return the papers to him?

A. Because he said we could have them.

Q. What did you want of them if they were not the papers you wanted?

A. I do not know whether—

Q. You said you did not want them.

BY MR. LEE: Let him answer.

Q. You just testified they were not the papers you wanted?

A. I suppose Mr. Donovan wanted to look them over.

Q. It was Donovan and not you that satisfied himself about the papers?

A. Certainly.

Q. Donovan was the man that said he didn't want them?

A. I did not say whether he did or not.

Q. Donovan took them?

A. I suppose so; I don't know whether he did or not. They were there on the table.

Q. How did you discover they were not the papers you wanted?

A. I don't just remember that.

Q. You did discover they were not the papers wanted?

A. Yes.

Q. And Donovan took the papers?

A. I don't know whether Donovan has got them or whether they are still with the grand jury.

Q. You said just now that Donovan took the papers?

A. I think so.

Q. Now you think so?

A. Yes, sir.

Q. You have been very unfriendly towards Schively?

A. Not in the least.

Q. You had a system to work out?

A. No, sir.

Q. You had instructions to indict John for perjury if he did not testify he signed some notes to purchase Ward's interest?

A. No, sir.

Q. You indicted Schrock for embezzlement, didn't you?

A. Yes.

Q. You have given Schrock an immunity oath to testify against Schively?

A. No, sir, I have not.

Q. You know that Donovan has?

A. I don't know anything of the kind.

Q. You are not unfriendly towards Schively?

A. Not in the least.

Q. You allowed Schively every latitude while he was in the jury room?

A. I certainly did.

Q. You indicted him for perjury because he would not swear that he bought the Ward interest and gave the Ward notes in payment, or just on what lines did you indict him for?

A. We indicted him because the evidence brought to the grand jury proved that he swore that he was working on a flat salary basis, when the evidence that we had there showed that he was working on a commission basis.

Q. That was evidence established by Schrock and his books?

A. Schrock, Ward and all of the witnesses.

Q. Who were all of the witnesses?

A. Mrs. Ward, Mr. Ward, Schrock, the bookkeeper—

[*Question read.*]

A. And others.

Q. Who else?

A. Mr. Copeland, Mr. Farnsworth, J. J. White— I cannot recall whether there were any more just now or not.



Q. You are a green grocer over there, are you not?

A. Yes.

Q. During the time you were giving Schively such a very nice time in that grand jury room, you had the grand jury supplied with apples and peanuts, and they were all sitting around eating apples and cracking peanuts while Donovan went at Schively, and you were presiding as the court?

A. I never saw anything— I will strike that answer.

[*Question read.*]

A. I was not.

Q. What did you do with the Schively papers? You are the foreman of the grand jury?

A. I believe they are with the clerk.

Q. They were not returned to Schively when he left the grand jury room?

A. I do not believe that he asked for them.

Q. They were not returned to him?

A. Not to my knowledge.

Q. They did not concern the matters that you wanted to know about?

A. No, I don't believe they did.

Q. Are you a "pan-tan?"

A. No, sir.

BY MR. LEE: Do you think that Mr. Schively would make a good "pan-tan?"

A. I think so.

BY THE PRESIDING OFFICER: At this time we will take a recess for ten minutes.

BY MR. LEE: I don't think we have anything else, your honor, to introduce. We rest the case.

BY THE PRESIDING OFFICER: The attorney, as representing the managers in the case, and the managers announce that they have finished their testimony. The respondent in this case has one witness who has not appeared, but will be in this evening. Owing to the lateness of the hour, I think that we had better wait until morning before any arguments are commenced. I presume you would prefer to wait, would you not?

BY MR. MANAGER EDGE: Yes, if the court please. We would dislike very much to have to commence the argument before tomorrow morning.

BY THE PRESIDING OFFICER: Then I presume there would be no objection to the respondent introducing this witness in the morning when we convene, to close his case, if the witness is present.

BY MR. ISRAEL: It won't take over five minutes, your honor.

BY MR. MANAGER EDGE: That will be satisfactory.

BY SENATOR BOOTH: I think it would be proper at this time to fix the length of time of argument for each side. We might hear a statement from counsel.

BY MR. ISRAEL: I will say for Senator Booth's information that we have been in consultation during the recess, and, while this is a

matter of gravity that ought not to be rushed in time any more than a murder case or any other case the effect of which is to work a forfeiture upon anybody, the managers and myself have concluded that if we start at 9 o'clock tomorrow morning, instead of 9:30, and this court will recess to 9 instead of 9:30, and will hold an evening session from 8 to 10 and recess at 5:30 in the evening, we can open the case for the state, present the argument of the respondent and clear everything away for the member of the board who closes for the state to close on the following morning. And I hope the Senate will permit us to follow out that program.

BY THE PRESIDING OFFICER: It will require a motion to meet at 9 o'clock instead of 9:30.

BY SENATOR BOOTH: I move that when we take a recess it be to 9 o'clock.

BY SENATOR COTTERILL: Mr. President, may we not include in that motion the suggestion of the counsel for respondent that we commence at 9 and run till 12 and from 1:30 to 5 and 8 to 10 and make that a complete motion?

BY SENATOR BOOTH: I will adopt that in my motion.

BY SENATOR COTTERILL: I second the motion.

BY THE PRESIDING OFFICER: That will be nine hours.

BY SENATOR PIPER: I move to amend that with a substitute to strike out the evening meeting.

BY SENATOR RUTH: I will second the substitute, Mr. President.

BY SENATOR BOOTH: I was going to suggest that the number of hours should be fixed for each side. Otherwise the argument will go on indefinitely. I think the prosecution should have three hours and a half or four hours and give the defense four or five hours and we will know when we will bring this to a close.

BY THE PRESIDING OFFICER: It seems to me that it is only fair that, if we limit the time, it should be divided equitably between the two sides, and by the arrangement that is proposed tomorrow the managers would have three hours and the respondent would have six hours of tomorrow's time—

BY Mr. LEE: Mr. President, of course we shall insist, and I know counsel will be glad to give us, the same privilege that he enjoys and equal amount of time.

BY Mr. ISRAEL: Yes, that would be that day. It is hard work, your honor, as you know as a practicing lawyer, and Senator Booth knows—that if there is one thing that certainly is disconcerting in consecutive and analytical argument, it is to be constantly under the knowledge that you are talking against time and within a time limit. It is very disconcerting. Now, the managers and myself, in fixing these hours, even cutting out the evening, as Senator Booth suggests—and which will be very agreeable to me—have allowed ourselves an outside limit so that we shall go to a vote on Thursday afternoon, and we may take much less time, because I will be largely governed by the amount of time taken in the opening as to the amount of time I will take to

present the respondent's case; and I hope the Senate will not fix any rule of so many hours and compel counsel to talk against it and then throw up his hand and beg for a little more time; but let it be as we have suggested, and if it is apparent that the respondent's counsel or the state's counsel have taken too much time, there are many ways to choke them off then and there.

BY SENATOR BOOTH: I will withdraw my suggestions, then, so far as fixing the time, but I would like to insist on the evening session and get rid of two or three hours.

BY THE PRESIDING OFFICER: The question will be then on whether we shall have an evening session tomorrow evening.

BY SENATOR COTTERILL: I do not understand that the motion made by the senator from King, Senator Booth, attempted in any way to fix the limit of the side. He simply put in that motion the schedule of time.

BY THE PRESIDING OFFICER: That is true. That came up as a suggestion and in fixing the time, that is really an element—that is, in fixing the schedule that is an element that enters into the determination of how much time we should give.

BY SENATOR COTTERILL: Now, it occurs to me, Mr. President, that we ought to have the evening session, as we have outlined, without fixing the exact time to be divided. We can see clearly in all human probability, unless we do have the evening session tomorrow evening, it will then require the entire day following to complete the argument, and we will be one day behind in the ultimate settlement of this matter. It would seem so to me, and I would hope that the motion avoiding an evening session be withdrawn, and that we have practically the schedule suggested by the counsel for respondent in that agreement.

BY SENATOR PIPER: I offered the motion as a substitute, not to have this evening session. I am opposed to this evening session. Now, I think when we take all this testimony, which is something that we have a voice in as jurors, I don't want to be tired out by an absolutely full day and then have two hours increase; and so far as I am personally concerned, I will not support any motion to have an evening session. I make my motion in good faith to get out of this evening session.

BY MR. ISRAEL: Will the senator pardon me a suggestion before his motion is put, your honor. I feel myself in the position that I cannot oppose the suggestion of the motion for the evening session, because I do not want to be in the attitude of causing delay at all, but it suggested to myself just now, if we will begin at 9 in the morning, and if we only took an hour and a half at noon, and we continued until 6 instead of 5:30, we will surely get through on the second day. That will be 9 to 12 and 1:30 to 6 until we finish.

BY SENATOR PIPER: I move that be a substitute for the evening session. I offer that as a substitute.

BY SENATOR METCALF: I second the motion.

BY THE PRESIDING OFFICER: The motion made by the senator from King and seconded by the senator from Pierce is that when we adjourn we adjourn to meet tomorrow morning at 9 o'clock, that we remain in session until 12 and in the afternoon from 1:30 till 6. Is there anything further to be said on the question.

BY SENATOR ROSENHAUPT: I hope that the motion will not prevail. I think it is much easier to adjourn at 5 o'clock and have three hours' recess, and come back at 8 in the evening. I hope that the motion of the senator from King to begin at 9 and run to 12 and 1:30 to 5 and 8 to 10 prevails, for it would be the best possible solution in this matter.

BY THE PRESIDING OFFICER: If the senator will pardon me, I cannot see any purpose in having the evening session determined at this time. I don't see why we cannot take that up when we arrive to it and determine it tomorrow evening. But those in favor of the motion, as stated by the chair, will indicate it by saying "Aye"; those opposed, "No." The ayes have it.

BY MR. ISRAEL: That is, from 9 to 12 and 1:30 to—

BY THE PRESIDING OFFICER: Until 6. Before adjourning, Senator Roberts wishes the following announcement to be made: The Committee on Salaries and Mileage will meet immediately after adjournment in room 4 to consider the matter of the claim of Marvin Arnold for attendance and mileage. Those who are interested in this matter can come before the committee at that time.

At 4:25 p. m., the Senate, sitting as a court of impeachment, adjourned until 9 o'clock tomorrow morning.

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SENATE CHAMBER,  
OLYMPIA, WASH., August 25, 1909.

The court of impeachment convened at 9 a. m. Roll was called, all members being present except Senators Graves and Nichols, excused.

BY THE PRESIDENT: Will the senator from King, Senator Knickerbocker, take the chair.

BY THE PRESIDING OFFICER: Have you your witness here, Mr. Israel?

BY MR. ISRAEL: I have, your honor. I will call Mr. Dial.

Charles M. Dial, a witness produced on behalf of the respondent herein, now being called in rebuttal, testified as follows:

*Direct Examination—*

BY MR. ISRAEL: Q. What is your name?

A. Charles M. Dial.

Q. Where do you live, Mr. Dial?

A. In Seattle, Washington.

Q. What is your business?

A. I am a state agent and assistant resident manager of the Title Guaranty & Surety Company, of Scranton, Pennsylvania.

Q. Where is their general agency office situated?

A. Seattle, King county, Washington.

Q. Were you connected with the company in the year 1906?

A. Yes.

Q. In what capacity were you then connected with them?

A. I was solicitor and employed in the general agency office in Seattle.

Q. State whether or not during that year you had anything to do with the record in that office pertaining to applications for the bonding of employees, and of the bonding of insurance agents?

A. I did have; yes.

Q. Will you tell this Senate how an application for an employee's bond was made in 1906 by an agency outside of the general agency—in what manner or how it reached the general agency, and what record was made of it when it did reach the general agency?

A. The applications for the bond were taken by the sub-agents, filled out and mailed, forwarded to our office; when the application came into the office, it was entered in the register and given a number; then we hold that application pending receipt of references which had been mailed by the sub-agent; when those references came in, they were examined and the risk was passed upon; if the references were favorable, the bond was executed, and marked "Executed" in the register, and if it was not executed, it was marked "Declined" in the register.

Q. State whether it was possible or not for a bond to come into the office—the general office—without a record was made of it?

A. It was possible, but I have never known of any applications coming into the office that a record was not made of.

Q. State whether or not it was possible for an application to come into the office and the bond be executed and no track be made of it?

A. That was impossible.

Q. Why?

A. All of our bonds are identified by number. That is the only identification we have on this bond. We don't go by name, but go by number, and every application for a bond and every bond that is issued is indented by a number as it stands upon the records of our books.

Q. When does it get the number?

A. The minute it comes into the office—just as soon as the mail is open.

Q. The application is the foundation for the number?

A. Yes, sir.

Q. Have you examined the application register during the year 1906 to see if there are any missing numbers?

A. Yes, sir.

Q. Are there any missing numbers?

A. There are not.

Q. Every number accounted for during that year?

A. Yes.

Q. Have you the records with you?

A. I have.

Q. Is there any way of telling now, independent of the register of the applications taken in the office as you have indicated, when they

were received; independent of that, is there any way of telling what applications were received?

A. No, there is not, independent of the register.

Q. State whether or not duplicate copies of the applications are kept in the office.

A. Duplicate copies are kept in our office of everything.

Q. Have you the duplicate copies of all applications that were made from Spokane in 1906?

A. I have them in the office; I have not all of them here.

Q. Have you here those of all of the applications made from Spokane from June to November, 1906?

A. Only the duplicate applications that were made for the employees of the Pacific Live Stock Association.

Q. Have you all of these?

A. I have all of those from May until the first of November, 1906.

Q. Did you make a careful search of these applications to determine that fact?

A. Yes, sir.

Q. I wish you would turn to your records—I will withdraw that. Who were your agents in 1906, between June and November, at Spokane?

A. Downs & Wheeler, an incorporated concern.

Q. State whether you had an agent there at that time named Donovan?

A. We never had.

Q. Now then, will you turn to your records and tell the Senate all the applications that were made between June, 1906, and November, 1906, or prior thereto, of any person connected with the Pacific Live Stock Association?

A. Well, I could not tell that—that is prior thereto—

Q. I mean beginning with June—I will take the prior part out—June to November.

A. Well, I have something like forty or fifty of them here.

Q. Read the names.

A. The first was Fred H. Hilliker, employee, general manager.

Q. What is its representation as to salary and commission?

A. Guaranteed salary \$150 per month and commission.

Q. The next one?

A. Paul Shallenberger, employed as assistant manager.

Q. What was his representation as to remuneration?

A. \$200 per month.

Q. Salary?

A. Salary.

Q. What is the next one?

A. John B. Schrock.

Q. What was his representation as to his remuneration?

A. Guaranteed salary \$150 per month and commission.

Q. The next one.

A. George Farnsworth, trustee and general agent.

Q. What was his representation?

A. One mill on each dollar's worth of business written by the association, guaranteed to be not less than \$75 per month, and 13 per cent. of the premiums "written by me as agent."

Q. And the next one?

A. William J. Walker, in the position of trustee and as general agent.

Q. What were his representations as to remuneration?

A. Two mills commission on each and every dollar's worth of business written by the association, guaranteed to be not less than \$100 per month, and 13 per cent. on the premiums written by him and his agent.

Q. And the next one?

A. William M. Hunter, in the position of trustee and general agent, guaranteed salary \$100 per month and a commission.

Q. And the next one?

A. Ezra Russell Ward.

Q. What was he to get?

A. Guaranteed salary \$125 per month and a commission on all business written.

Q. When was the bond written?

A. That was the 15th day of August, 1905.

Q. When did it expire?

A. The 15th day of August, 1906.

Q. Have you a notification from anybody regarding the expiration of the bond?

A. We have here a letter from Downs & Wheeler, under date of October 23, 1906, notifying us that the bond was to have been dropped at the expiration on the 15th day of August, as "the party is no longer in the employ of the obligee."

Q. Pass on.

A. Samuel G. Copeland, trustee.

Q. What was he going to get?

A. A salary and commission. It does not state the amount.

Q. The next one?

A. John B. Schrock, general manager and secretary, as trustee.

Q. When was that written?

A. That was written, apparently, December 1st, 1905.

Q. Expired December 1st, 1906? Who is the next one?

A. The next one is F. E. Matheson, as trustee.

Q. What did he get?

A. Two hundred dollars per month and expenses.

Q. Pass right along.

A. The next is Sam Alberg, \$25 per week as collection clerk; James Eddie Mason, trustee, \$200 per month and expenses. The next is Thomas Hayes, \$25 per week, collector. There was Carlos M. Spaulding, traveling collector, \$20 per week and expenses. The next one is the bond of George M. Schrock, as solicitor on commission. Then we had the bond of William M. Hunter, as trustee; commission and salary equal to one mill on each dollar's worth of insurance written, which had an average of \$300,000 for March. That is all of the officers of the association. I have here a number of bonds written during May, June, July, August, September, and October, 1906, for agents working on a commission, solicitors soliciting business.

Q. Have you any record of any bond or any record of any application for a bond, either through your Spokane agency or independent, or at all, for the bonding in any manner of J. H. Schively?

A. We have not.

Q. Was any such application, from your records, ever received at the office in Seattle?

A. There never was.

Q. Taking your numbers and your check system on your books of entries of applications, and, as you say, having examined them from June until November, was it possible for such an application to have reached the office and not be noted?

A. It could not have reached the office and not be noted.

Q. There are no numbers not accounted for?

A. No, sir; no numbers.

Q. What other examination of the office have you made aside from these matters, if anything at all, for the purpose of determining whether Mr. Schively's name appeared anywhere in that office in any transaction?

A. We examined the ledger account with our Spokane agents for the name of Schively; we examined our card index system; we examined our miscellaneous correspondence with the Spokane agency for a letter not connected with any bond that had been given a number.

Q. What did you find?

A. We found no correspondence whatever, no record of it.

Q. No record of J. H. Schively's in any manner? How long have you been familiar with this Title Guaranty & Surety Company?

A. Since April 15th, 1904.

Q. Are these bonds that are written for insurance agents by your company the employee bond that is issued by your company?

A. Well, there is a distinction between the employee bond and the insurance agent bond.

Q. Wherein does this distinction exist?

A. The insurance agent bond is responsible only for the misappropriation of premiums or funds received as an insurance agent, amounting to larceny and embezzlement.

Q. What, if anything, has the employee to do before such a bond is written?

A. The employee?

Q. The employer?

A. After the application is received, a statement is sent to the employer, in which the queries are made as to the amount of salary in the position. The bond is not executed until this statement is received, signed by the employer. The answers to that statement are checked up with the answers given to the questions given in the application. If there is a variance, the bond is not executed until they are made to conform. If they are not made to conform, the bond is marked "Declined" and not executed.

Q. Do I understand there is a limit in that class of bonds over the general employee's bond?

A. No, sir.

Q. I will now ask you whether or not your company writes or ever has written through your general agency or home office an employee's bond where the reply of the applicant is that he is working on a commission?

A. We don't write them; no, sir.

Q. What would have been the procedure at your general office had an application come in from a general agency representing that J. H. Schively was a trustee and president of the Pacific Live Stock Association and that his compensation was strictly on a commission basis?

A. That is impossible for me to say. My idea is it would have been declined.



Q. Why?

A. That is the positive instruction from the home office of our company, and we have been declining all of those bonds and do right along.

Q. Will you afford counsel an opportunity to examine your check register, and these applications you have been reading from?

A. Certainly.

BY MR. ISRAEL: Then please pass them to counsel.

BY MR. MANAGER EDGE: We don't care to look at them.

BY MR. ISRAEL: I would not care about putting these in evidence unless you gentlemen require it. It is the records in this office down there, and unless you want them introduced into the record for some purpose we will allow him to take them with him. You may take the witness.

*Cross-Examination—*

BY MR. MANAGER EDGE: Q. You say, Mr. Dial, that you never write a bond where the party seeking to be bonded is working on a commission?

A. No, sir; we would not execute the regular form employee's bond.

Q. What kind of a bond would you execute?

A. We would execute an insurance agent's bond.

Q. But you would not execute an employee's bond where he was working on a commission?

A. No, sir.

Q. Did you say no?

A. No, we don't execute those.

Q. Then how do you explain this bond of George W. Schrock, which recites that he is a solicitor, and the only answer to the question of "What salary or compensation will you receive?" is the simple word "Commission"?

A. That is an insurance agent's bond. I will show you, if you will let me take the application. Here is the form number of our bond, "553." I have one original bond here in my pocket.

Q. That is a bond, is it not, conditioned that the person bonded will not default with any funds entrusted to him?

A. Derived as an insurance agent.

Q. Yes. Well, now, you don't know whether or not George W. Schrock's duties were any different from Mr. Schively's or any of the others, do you?

A. Yes.

Q. How do you know?

A. I know from his application and the statement made by the association to us before the bond was executed.

Q. How do you know that when you say that Mr. Schively, to your knowledge, did not make any application?

A. Well, the question was as president of the association.

Q. You say that a statement from the company shows that George W. Schrock's business was different from Schively's or any other person connected with the company?

A. Well, he was different from any of the officers of the company.

Q. You don't know whether his pay was received on a different basis or not?

A. Only from the application and the statement.

Q. Well, it is a fact that you do insure employees that are working on a commission business, or bond them?

A. We insure insurance agents working on a commission basis.

Q. Well, then, you insure any person working for an insurance company that is working on a commission basis?

A. As an agent of the company, we will write those bonds.

Q. Well, you would consider one that received his pay on the basis of percentage and business written as an agent, would you not?

A. Not necessarily.

Q. What would you consider him?

A. Well, if an officer—suppose the president, secretary or treasurer of an insurance company was working purely upon a commission basis, that would be different from a solicitor working on a commission basis.

Q. Now, in all of these bonds you recite that there is a guaranteed salary of so much a month?

A. Yes, sir; I think so.

Q. What would you understand by that?

A. We understood that that salary was paid to them irrespective of whether or not their commissions amounted to that much.

Q. But you understood by that that there was no flat salary paid them and it was paid them on the basis of commission?

A. No, we understood that that much salary would be paid them in any event.

Q. Well now, here is another bond for William M. Hunter, who was one of the directors. It says, "Commission salary equal to one mill on each dollar of insurance written which has averaged \$300,000.00." There is nothing, absolutely nothing, about any salary, any guaranteed salary?

A. I think you will find that bond was canceled, if you look inside.

Q. Well, the application was made, wasn't it?

A. The application was made; yes, sir.

Q. And the bond was turned down?

A. Yes, sir.

Q. And you don't pretend to say but what Schively may have made application and that bond was turned down over in the other office. This application was made May 19th, a couple of months before his application could have been made. Now if this application, which was made on May 19th, 1906, recited that he got a commission on so much business written and that was turned down, isn't it entirely possible that Schively may have made an application a couple of months later and that that went into the office in Spokane and they, knowing that you had turned down this bond a couple of months before, turned that bond down there in their own office and never sent it to you, having knowledge that you had a couple of months before turned down a bond of the same kind?

A. I think this was not finally acted upon until October.

Q. How long does your company take to act upon applications for bonds—four or five months?

A. Sometimes.

Q. They probably did in this case?

A. I don't know as to that.

Q. Had the matter under advisement five months before they turned it down?

A. You understand that sometimes the employers do not fill out the statement. We will hold it a year, if necessary, if we don't get the employer's statement.

Q. Will you state in this case the employer did not fill out the statement?

A. I don't know.

Q. Then what makes you make the statement it was held up four or five months?

A. From the letters inside there.

Q. Here is a copy of a letter dated June 7th, about three weeks afterwards—

A. It may have been another bond. I don't know—

Q. From the company, stating that you have canceled the bond of William Hunter. That was three weeks after, under date of June 7th?

By Mr. ISRAEL: That was the Hunter bond.

By Mr. MANAGER EDGE: This is the Hunter bond which says on a commission of one mill on \$300,000.00.

Q. So that it probably did not go on until October, then?

A. Possibly not; I don't remember.

Q. And you would not expect that Downs, Wheeler & Company would send you another application three or four weeks after you had turned one down which was reciting the very same facts, would you?

A. Why, they had no authority to pass on it one way or another.

Q. Did they have authority to refuse to accept the bond if they did not believe the facts were proper?

A. Oh, yes.

Q. They certainly did, didn't they?

A. Yes.

Q. And if they thought from Schively's application they could not give the bond, they could take the responsibility there themselves and turn down the application; isn't that true?

A. Yes, sir.

*Re-Direct Examination—*

By Mr. ISRAEL: Q. If it is in evidence by a witness that this firm of Downs and somebody in Spokane, as your agents, transmitted to your agency an application of John Schively for insurance, you are prepared to say that no such application was received at the Seattle office?

By Mr. MANAGER EDGE: That is not the evidence, Mr. Israel. You are assuming and putting up a state of facts that are not in evidence.

By Mr. ISRAEL: The record will tell that. I will withdraw the question. It is not necessary, any way. The evidence will show for itself. That is all, Mr. Dial. Now, if your honor please, this witness comes here in substitution for another who was summoned by telegram— Who was it?

By THE WITNESS: H. A. Roser and John R. Scott.

By Mr. ISRAEL: I issued a subpoena for John R. Scott to come and bring with him his records, presuming him to be a proper person to testify from these records. On telephone communication regarding the coming of the witness, it was demonstrated that Mr. Scott was not the available party, but that Mr. Dial was. So we requested over the 'phone that Mr. Dial substitute himself for Mr. Scott and come here with these records. Under those circumstances, I think that Mr. Dial should be allowed witness fees and mileage, as Mr. Scott did not come, and we

also had Mr. Raser remain back, and we did not bring Mr. Raser, although he was under subpoena.

BY THE PRESIDING OFFICER: The chair is of the opinion that is fair.

BY MR. ISRAEL: You will report, Mr. Dial, to the secretary.

BY THE PRESIDING OFFICER: That is all the evidence, is it?

BY MR. ISRAEL: We rest, your honor.

BY THE PRESIDING OFFICER: Before the counsel begin their argument, the chair understands that Mr. Edge has charge particularly of article 25 and possibly 24, and Mr. Lee of the balance. Now, it is understood, is it, that both Mr. Edge and Mr. Lee are to open the case, each taking the matters which they have had in hand.

BY MR. ISRAEL: No, sir; that is not the understanding, your honor, at all.

BY MR. MANAGER EDGE: No, your honor, please; I think the way we agreed to proceed is that myself in opening will give a general resume of the law and facts of the case, as briefly as may be, and then be followed by Mr. Israel, who will discuss the same questions for the respondent, and then he in turn will be followed by Mr. Lee, who will close the case, so that the opening argument will not be split, and there will simply be the three arguments made.

BY THE PRESIDING OFFICER: I just wanted an understanding in advance.

BY MR. MANAGER EDGE: While we have tentatively assumed charge of different phases of the case, yet they are all interwoven and make the same cause of action.

BY THE PRESIDING OFFICER: You may proceed.

BY MR. MANAGER EDGE: *Mr. President and Gentlemen of the Senate:* The trial of J. H. Schively upon the articles of impeachment exhibited by the House of Representatives is now about to close. I know we are all thankful that we have progressed so rapidly as we have in presenting the law and the facts to you, and that very shortly this trial will have become a matter of record.

It becomes my duty, in accordance with the rules, and in accordance with the generally-accepted usage that has come down to us through the different ages of judicial history, that before the issues in this case are finally submitted to their judges, counsel representing the prosecution and the defense be heard in argument upon the merits of the accusation—it has fallen to me, as one of those representing the state, to make the opening address of this argument.

If we rested our hopes simply upon our discussion of the law and the facts, we might be at somewhat of a disadvantage; but our case is rested upon the evidence, and it is that that we endeavor to recall to your mind. Nothing that I can say here or that any counsel can say here will change the evidence in any particular. We can discuss it with you—perhaps make plain some features that may at the present time be somewhat indistinct in your mind—but that is all we can hope to do. By reason of our familiarity with the issues here, that is possible for us.

It does not occur to me that it would be amiss to say that in this prosecution, so far as the board of managers and their counsel is concerned, there has been absolutely no personal feeling exhibited or intended to be exhibited. We are here in pursuance of appointment of the body that co-ordinately with this body sat across the hall and participated in a legislative work of this state—not perhaps, voluntarily, if you please, but in pursuance of the provisions of the constitution that provides that in these cases the House of Representatives present the matters and things upon which are rested the articles of impeachment which they have preferred.

I know that if any of the board of managers, and, I believe, of counsel associated with them, did not believe that these articles are well founded in law and in fact they would not appear today and would not have been here for the past two or three weeks participating in this case. I know that I never have and I trust I never will be called upon to prostitute such talents as I may possess by voluntarily coming before a body of such dignity as this, or any other body, and asking for judgment against any man, particularly when that judgment means much to him, if I did not honestly and sincerely believe in the justice of the accusation. That is true, I believe, of every man who has participated on the state's side of this case.

The peculiarity of this trial—the fact, I believe, that for the second time there has been convened in the history of this state this court, one exercising powers peculiar to itself, of a jurisdiction that is not often invoked, of a jurisdiction that is peculiar in the judgment which it may render, that makes its own laws, so to speak, makes its own rules of procedure—might make any counselor who has participated in trials in the courts feel that his limitations were not so great, and might well make any advocate more skilled than I feel sensible of his lack of knowledge of all the law and all of the precedents that are applicable here.

It has been often discussed throughout the state that the Senate was not the proper place to try this case; that recourse should have been had to the criminal courts of this state, and there the issues tried and settled.

There is an old saying that has come down to us from English jurisprudence that every man is entitled to a trial by a jury of his peers, that has sometimes been invoked in aid of the respondent here; but when that rule is used as it was intended to be used by those who helped to make it, it exactly fits this case from every standpoint. When that rule was invoked and commenced its operation in England, it meant that when any man was placed upon trial, upon any accusation, he had a right to have that trial held and the issues presented by those who were equal with him in standing in the community. And it was the right of any lord in England or any member of the Commons, when prosecution was commenced against him, to take that trial from the little court in which it might have been under other circumstances commenced, and take the issues and the process before

the House of Commons, of which he was a member, or before the House of Lords, of which he might be a member, and there have the issues determined by men who were his equals in society and in the government of that country. And that is what is meant by trial by a jury of his peers.

Here is a state officer on trial. He can in no wise complain that a trial before the other representatives of this state equal in dignity to him will not accord to him the fairness that would be accorded to him in any court of the land. The process of this court has been open to the respondent without question. Whenever any witness has been asked for by him, this Senate, and I say rightfully, too, has immediately granted to him the right to have any one within the state that the process could reach brought here to testify to the facts.

Much was heard at the beginning of this trial as to a trial conducted in the proper manner. Some thought that we were not proceeding according to the law, but the contrary has been our contention at all times, and I say here now that we, during all of the proceedings leading up to the present moment, have taken as a guide the law and the evidence and we have presented the law and the evidence to you, and we ask you to be guarded by those two things, regardless of what the verdict in this case may be. If this respondent, when measured up to those two impartial standards, is found to have complied with them, I say it would not lie in my mouth or the mouth of any man here representing the state to ask that he be convicted. But we just as earnestly urge that when brought up to the square of those standards, if he be found to be in conflict with the law and the evidence, then the duty upon you is just as earnest, the duty is just as incumbent and as great that judgment in a proper way be rendered against him. Those are the only things. This Senate may not be here a great while. We will have gone down to our different walks of life. Perhaps some of us will not again participate in the deliberations of the legislature of this state; but I want it to be said, regardless of whether we do or not, we have carried out and gone through with this case governed by the law and the evidence. Those eternal principles will be invoked, as they have been, regardless of what the outcome of this case may be, and it should be said that we have been governed and will be governed by them.

I might say by way of diversion that respondent in this case has been represented here by very able counsel, and if this judgment goes against him it cannot be said that every question of law and of fact was not urged as eloquently and as ably as it was possible to have them urged in his behalf. Every advantage was taken by the respondent under the law and the evidence to protect him. Counsel, in a very able manner, displaying great skill as an advocate and a profound knowledge of the law, has urged every possible defense in behalf of his client; *First*, the disqualification of certain gentlemen in the Senate was urged. As a matter of fact, why was that disqualification urged? It was contended then that certain men, by reason of state-

ments made, manifested an antagonism to the state insurance commissioner of this state. But now stop and think—taking the other side of it—why did they do that? It cannot with any show of reason be said that men of the intellectual standing of the senators of this state are going to be prejudiced against any honest man. He himself is to blame for that prejudice, if any exists. If he had conducted his office at all times in accordance with the law and in accordance with the principles that any office man would follow, would there ever have been any senator of this Senate that would be prejudiced against him? On the other hand, every man would have raised his voice in protest against any accrimonious or unfounded accusation that might have been brought against him. It is not a question of politics here, for the most of the gentlemen concerned are members of the same political party. There is not competition by which any one desires to remove from the field of political controversy any man who is occupying a position in the interests of them. That is not it, and that was not and should not have been the cause of any prejudice that might have existed. It is simply a question of deciding according to the law and the evidence. After all has been said and done, the only question here to be considered by this Senate is: Is this man fit to hold the office he is now endeavoring to fill? It is necessary, in case the Senate comes to the conclusion to find this man guilty on some of the articles of impeachment that have been preferred, in arriving at that conclusion, to consider the question of the official position of this man as shown by the evidence.

Anticipating that counsel for the respondent may raise some questions of law dealing with this, and following the general practice in trials in court, that counsel commencing the argument should lay, as it were, a foundation in law upon which they may rest their case, I deem it proper at this time to offer for your consideration a few short extracts from the authorities covering questions in this case, so that in the event, if counsel does, with his usual force and plausibility, urge upon you any authorities which he may have, that at the time you are listening to those which he may urge, kindly consider the ones you have heard me briefly read at this time. As I have stated, and it has been settled here, a court of impeachment is a court. The purpose of the court of impeachment is to ascertain the fitness of the person sought to be impeached holding the office, and it has been generally and is generally conceded, and is the rule, that any offense which will come within the constitution is sufficient ground for the removal of the incumbent from that office.

I will read to you some short extracts touching upon the character of the crime for which a person may be indicted or may be impeached. The authority from which I will read is the American and English Encyclopedia of Law. It is the dictionary of the lawyers, practically. Its statements are always followed by authorities from every state in the Union, and it is, and its enunciation of the principles are, generally regarded as being the law:

In each of the only two cases of impeachment tried by the Senate of the United States in which a conviction resulted the defendant was found guilty of offenses not indictable either at common law or under any federal statute, and in almost every case offenses were charged in the articles of impeachment which were not indictable under any federal statute, and in several cases they were such as constituted neither statutory or common law crimes. The impeachability of the offenses charged in the articles was in most of the cases not denied. In one case, however, counsel for defendant insisted that impeachment would not lie for any but an indictable offense, but after exhaustive argument on both sides this defense was practically abandoned. The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase "high crimes and misdemeanors" is to be taken not in its common law sense, but in a parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruption, mal-administration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct and even gross improprieties, by judges and high officers of the state, although such offenses be not of a character to render the offender liable to indictment either at common law or under any statute. Additional weight is added to this interpretation of the constitution by the opinions of eminent writers on constitutional and parliamentary law, and by the fact that some of the most distinguished members of the convention that framed it have thus interpreted it.

I have just read this quotation from the American and English Encyclopedia of Law, volume 15, page 1066, and I will call your attention to the statement by Judge Story, who presents this significant observation. He was at one time supreme justice of the court of the United States:

There is not a syllable of the constitution which confines impeachment to official acts, and it is against the plainest dictates of common sense that such restraint should be imposed upon it. Suppose a judge should countenance or aid insurgents in a conspiracy or insurrection against the government. This is not a judicial act, and yet it ought to be impeachable. He may be called upon to try the persons whom he has aided. Suppose a judge or other officer to receive a bribe not connected with his judicial office, could he be entitled to any public confidence? Would not these reasons for his removal be just as strong as if it were a case of an official bribe?

This is Judge Story as he read and construed and interpreted the constitution, upon that subject. According to Judge Story, therefore, an act to be impeachable need not be done during the present term of the incumbent, or during any term or any period of public employment. It is sufficient that the incumbent has been guilty of some act which raises the question of his fitness for the office.

I find the Federalist, considered to be the highest authority on the constitution, one of the papers written at that time, and forms the very substantial part of the authority on the constitution, and an authority on the construction of the constitution, declares that impeachment is for "those offenses which proceed from the misconduct of public men, or for, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar



propriety be denominated political, and they relate chiefly to injuries done immediately to the society itself." (Federalist paper No. 65).

Curtis, one of the most eminent writers on the constitution, has this to say:

Although an impeachment may involve an inquiry as to whether any crime against any positive law has been committed, yet it is not necessarily a trial for crime, nor is there any necessity in the case of crimes committed by public officers for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice, in respect of offenses against positive law. The purposes of the impeachment lie wholly beyond the penalties of statute or common law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause might be found in the fact that either in the discharge of his office or aside from this offense he has violated a law or committed what is technically denominated a crime, but the cause for removal from office may exist where no offense against positive law has been committed, and where the individual has from immorality or imbecility or misadministration become unfit to exercise the office.

The fact that a jury might not upon the trial of the case send a man to the penitentiary is not conclusive or is not evidence that under the same state of facts he might be removed from public office. Story again says:

Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct \* \* \* In the few cases of impeachment which have heretofore been tried, no one of the charges has rested upon statutory misdemeanors.

Again quoting from Story on the constitution:

Our own constitution provides the governor and other state officials and judicial officers, except judges and justices of courts not of record, shall be liable of impeachment for high crimes, misdemeanors and malfeasance in office.

The respondent in this case is a state officer. There is no way in which he may be removed, no matter how grave an offense he may commit, if he would—if he cannot be removed in this manner. That question has not, and I presume will not, come before the Senate again. Those matters have been very thoroughly gone over.

I will now read to you the sections of our code, in order that you may carry them in mind, for perhaps some of you have forgotten the language covering the office of insurance commissioner. I will read 5636 of Pierce's Code in regard to the entrance fee. The law is plain:

The commissioner shall require in advance the following fees: *First*, for filing articles of incorporation, or certified copies of articles, by-laws, or other certificates required to be filed in his office, \$25.00; issuing certificate of authority, \$10.00; for each renewal certificate of authority, \$10.00; for filing the annual statement of condition, \$10.00; and for filing each annual statement of business transacted in this state, \$10.00. He shall not require any other fees in advance.

It is a common rule of construction that when a statute specifically

says that certain things shall be done, that the things not mentioned as required to be done should not be done.

Section 5622, says:

The expense of every examination or other investigation of the affairs of any organization, pursuant to the authority conferred by the provisions of this act shall be borne and paid by the corporation so examined. No charge shall be made for any examination of any insurance organization except for necessary traveling and other actual expenses incurred. All charges for making an examination shall be presented in detail, and shall be paid by the organization examined. Should payment be refused, the bill shall be approved by the commissioner, audited by the state auditor, and paid on his warrant drawn in the usual manner on the state treasurer to the person making the examination. The commissioner shall revoke the certificate of authority granted the company that refused to pay the bill for expense of examination, and shall not again grant it a certificate of authority until it has paid to the state treasurer the amount of such bill.

By peculiar irony of fate, Schively in his own testimony testified that he was an insurance man. The testimony showed that he was a member of the legislature of the State of Washington of 1895 that placed that very law upon the books. Being an insurance man at that time, he cannot come here and state that he did not know the full meaning of the law. Unless they disregard every other rule of procedure of the legislature, that statute must have been discussed at the time and the meaning of these sections made plain to the members. That is here now, and he should be the last one to claim that he didn't know the meaning of it.

Section 5648 provides for the employment of a deputy:

The commissioner shall appoint a deputy, whose salary is hereby fixed at \$1,500 per annum, and in the absence of the commissioner, or his inability from any cause to exercise the powers and discharge the duties of his office, the powers and duties of the office shall devolve upon the deputy.

He cannot claim that he is simply a servant in the employ of the secretary of state. The statute contemplates his existence; provides that when the head of the office is not there he can exercise, and should, all the duties of it. There has been some contention among the senators as to whether or not he was an employee when this offense was committed, upon which some of these articles of impeachment rest.

I will read you a very short case covering as nearly as I can that question. This is from Nebraska. Unfortunately for the State of Washington, and fortunately for the State of Nebraska, in that state whenever they try to impeach a public officer the articles of impeachment are preferred by the House of Representatives and the issue joined on that, and the whole matter is transferred into the supreme court, and there the lawyers and the supreme court conduct the trial of the case of impeachment, and it is not decided before the senators. For that reason this appears among the decisions of the supreme court of the State of Nebraska. The legislature of that year; April, 1903, preferred articles of impeachment against this man, charging him with

official misdemeanor, and on the 6th of April of the same year adopted articles of impeachment against J. D. Hill, state treasurer, for misdemeanors alleged to have been committed by him—

By MR. ISRAEL: What is the citation?

By MR. MANAGER EDGE: *State v. Hill*, 20 L. R. A. 577, recorded in the supreme court of Nebraska. Touching upon that I will not read the entire opinion; it is lengthy, and some of it touches upon matters that were not in controversy here, but the supreme court of that state said:

Each respondent was a civil officer at the time he was impeached, and had been such uninterruptedly since the alleged misdemeanors in office were committed. The fact that the offense occurred in the previous term was immaterial. The object of the impeachment was to remove a corrupt and unworthy officer. If his term had expired and he is no longer in office, that object is attained, and the reason for his impeachment no longer exists; but if the offender is still an officer he is amenable to impeachment, although the acts charged were committed in the previous term of his same office.

And that cites all the authorities in the United States and comments upon them up to that time, and after considering them all very carefully, announces this as the law.

In this case I don't believe that any contention can be made respondent is not now insurance commissioner and has for the last ten years not changed his duties in any particular. Since the election had last fall, or since he took his oath of office in January, he has not varied. His duties are prescribed by the statute just the same as they were before.

Another short authority on the same subject is found in the 14th Southern Reporter, page 30. In this case, by the supreme court of the State of Louisiana, an action was introduced by the State of Louisiana on the relation of certain citizens and taxpayers, under provision of certain articles of the constitution, to remove the defendant from his office as sheriff of the parish of St. James, to which he was elected in 1892. The provision of the constitution in that case was that article 196 provides for the impeachment of such officer for high crimes, misdemeanors, malfeasance and corruption. I may state that every one of these is included in misdemeanors or malfeasance in office, but down south they use considerable language when a few words would have the same meaning. Now, in commenting on that case, the supreme court of Louisiana says:

The intention of article 201 of the constitution is to remove from office an incumbent who has been guilty of any of the offenses mentioned in article 196 of the constitution while he was in office. It is immaterial, therefore, whether they were committed during his present or immediate preceding term of office. His inability to hold the office results from the commission of the said offenses, and at once renders him unfit to continue in office. The fact that he had been re-elected does not condone and purge the offense. The sheriff was elected in pursuance of the provisions of the constitution declaring what acts committed by him should be sufficient for his removal. The constitution was made by the people in their sovereign capacity, and by electing

an officer they cannot modify its provisions. In the election of defendant no question was submitted by which articles 196 and 201 were changed. Neither of these articles specify in what time a suit to remove an officer shall be instituted, whether in one term or another, nor do they specify any limitation as to the offense. We must, therefore, conclude that the articles were intended to remove an unworthy officer while in office, irrespective of the fact whether the act complained of was committed in his first or a subsequent term. The learned counsel of defendant urge, however, that a suit under article 201 of the constitution cannot be assimilated to proceedings by impeachment. The effect of the conviction may be different, but the laws applicable to the commission of the offense are the same. The great weight of authority is that an officer may be impeached while in office for acts committed in a prior term.

And then they go ahead and cite different cases, including this very case in Nebraska, citing that as one of the other authorities for reaching this conclusion. They go ahead and use the very language which I read to you in the Nebraska case:

"There was good reason for overruling the plea to the jurisdictions in the three cases mentioned. Each respondent was a civil officer at the time of his impeachment, and had been such uninterruptedly since the alleged misdemeanors were committed. The fact that the offense occurred in the previous term is immaterial. The object of the impeachment is to remove a corrupt or unworthy officer. If his term has expired and he is no longer in office, that object is obtained, and the reason for his impeachment no longer exists, but if the offender is still in office he is amenable to the impeachment, although the acts charged were committed in his previous term of the same office." We concur in these reasons. This court intimated in *State v. Cheevers*, 32 L. R. A. 946, that it entertained the same views as expressed above. It is, therefore, ordered, adjudged, and decreed that the judgment appealed from be amended so as to reverse the decree sustaining exceptions thereto, specifications one, two, three, etc.

I will now read to you the law of our state on extortion, in order that you may carry that in mind as to the legislative enactments defining that crime (section 173 of Pierce's Code):

If any officer whose fees are stated by law, shall corruptly exact or extort any greater fees for any services than by law are stated and allowed, or shall levy, demand or receive or take under color of his office, any bond, bill or note, or other assurance, or promise whatever securing the payment of any greater sum of money for any service than he is by law authorized to demand and receive, he shall, on conviction thereof, be imprisoned in the county jail, not exceeding one year, and be fined not exceeding one thousand dollars.

That is the statute on extortion in the state—that the insurance commissioner shall receive in advance \$35. The statute says that after the performance of the services he must render an itemized statement to collect the money for the examination. Clearly, by collecting this money in advance, in that particular, and in performing no services or rendering no statement, he is clearly within the statute of extortion. That is the universal law, and I will read you again from the *Encyclopedia of Law*, which announces the universal definition:

The ordinary meaning of the word "extortion" is the taking or obtaining of anything from another by the means of illegal compulsion

or oppressive exaction. But the word has acquired a technical meaning in the common law, and in this sense may be defined to be the corrupt and unlawful taking by any officer of the law under color of his office, of any money or thing of value that is not due to him, or the corrupt or unlawful taking of any money or thing of value, under color of his office, in excess of what is due to him, or before it is due to him. (Volume 12, American & English Encyclopedia of Law, p. 577).

Any person who collects before it is due him the money which may be afterwards legally due him, if he collects it before it is due him, that completes the evidence of extortion.

BY MR. ISRAEL: In this state?

BY MR. MANAGER EDGE: That is the American & English Encyclopedia of Law. Now, another proposition that has been urged throughout this trial, that the respondent, assuming that what he said was true, and I submit that that is a pretty violent assumption, throughout this trial—assuming that what he said was true, that he did not know what the law was, I will read you the authorities that show that it was his duty to inform himself as to the law, and that he cannot plead that ignorance as an excuse. I will read you another Nebraska case (11 Nebraska 161). Now, that case was an action brought to recover a penalty for taking illegal fees. They had a peculiar statute in Nebraska that whenever an officer collected illegal fees that they would collect them back and make him pay a penalty in addition to recovering the fees. This was an action brought to recover the penalty for collecting illegal fees. In discussing that case I am only reading the questions that pertain particularly to the matters here, and will not take the time to read the others:

The third point presents the question, whether the good faith of the defendant in demanding and receiving fees in excess of those allowed by law for the services rendered constitute a defense to the action. Having examined the numerous cases cited to this point, I find that there is little ground for varying the plain and obvious language of the section of the statute which provides that if any officer whatever whose fees are hereinbefore expressed and limited shall take greater fees than are so hereinbefore limited and expressed, for any service to be done by him in his office, such officer shall forfeit and pay to the party injured fifty dollars, to be recovered as debts of the same amount are recovered by law.

The provisions of the statute of Pennsylvania were similar to those of our own. Under it, in a case exactly in point, the supreme court of that state used the following language. And I submit that the supreme court of Pennsylvania is recognized as a very eminent authority. They are one of the oldest legal jurisdictions of the United States, and the law is well settled. The supreme court of Pennsylvania said:

The penalty imposed by this act may be incurred by exacting fees which were supposed at the time to be legally demandable. By the very words of the prohibitory clause, the taking is the gist of the offense. Ignorance of the law will not excuse in any case; and this principle is applicable, and with irresistible force, to the case of an officer selected for his capacity, and in whom ignorance is unpardonable. The very

acceptance of this office carries with it an assertion of a sufficient share of intelligence to enable the party to follow a guide provided for him with an unusual attention, clearness and precision. On other principle a conviction would seldom take place, even in cases of the most flagrant abuse; for pretexts would never be wanting. Sound policy, therefore, requires that the officer should be held to act at his peril; and we are of the opinion that the absence of a corrupt motive, the existence of an agreement by the party injured, furnishes no justification for doing what the law forbids.

The question of ignorance in the collection of fees is no defense. The supreme court of Vermont, in an action brought against the defendant for the serving of a writ—

By MR. ISRAEL: From what are you reading?

By MR. MANAGER EDGE: The 22nd Vermont, page 639. The defendant collected more fees than were legally due. The supreme court said:

This is the most palpable case of taking illegal fees by the defendant. The copies were charged at \$3 each, when the case shows that each copy, at the rate of charge fixed by the statute, would amount only to eighty-five cents. The facts were all before the defendant; and as it is to be taken that every man knows the law, no question can arise as to the scienter and motives of the defendant.

Now, another question that may occur to you is whether or not extortion may be committed by a deputy, whether or not the respondent in doing so as deputy and under the authority—alleged authority—of a superior officer could be guilty.

In the 47th Missouri, page 416, the supreme court rendered this decision:

The complaint in this cause is founded upon the statute which makes the taking of illegal fees, under the color of official authority, a misdemeanor. The statute is expressed in the terms employed to define extortion at common law, and is designed to prevent and punish that offense. The complaint charges that the defendant was a deputy constable of St. Louis township; that as such he had in charge an execution against one Flederman for levy and collection, and that the defendant, in effecting the collection, corruptly and unlawfully, and under the color of his office, extorted from Flederman the sum of \$5. That is the substance of the complaint.

In discussing that state of facts, the supreme court said:

If these views are correct, it follows that the defendant exacted and received from the execution matter a sum of money to which he was not at that time legally entitled, and to which he has shown no right; and that is extortion, the money being obtained under color of official authority. It is a mistake to suppose that extortion consists alone in taking illegal fees, or more fees than are allowed by the law. It is an offense to exact them before they are due. A coroner is guilty of extortion who refuses to take the view of a body until his fees are paid; the statute requires that he go there and do it. The constable must be presumed to have known the law, and the presumption in this case is most reasonable. He knew that he had no right to determine his own compensation for the keeping of the horse; he knew that it was for the justice to fix the compensation. Had he promptly referred the matter to the justice, in the meanwhile detaining the horse, the case would have presented an entirely different

aspect. But he took a defferent course, and must abide by the consequences. The defendant's instructions were properly refused. It is obvious from what has already been said that the reasonableness of the \$5 charge was not a material matter. Its exaction prior to its allowance was unauthorized and illegal, irrespective of the question of the reasonableness of the amount claimed. The constable had no legal right to exact the money as a condition to the surrender of the debtor's property, the claim not having been allowed by the proper authority. The objections taken by the complaint are not available upon a motion taken in arrest. They are of a technical character and do not affect the substantial merits of the complaint. Whether the execution was upon its face directed to the constable or to the constable's deputy was a matter of no importance. The deputy levied it as a legal and valid process, and made the collection in virute and under color of his office.

In the 25th Atlantic Reporter, page 610, a Pennsylvania case there was an indictment against the defendant for extortion. The defendant was convicted and he appealed, and, discussing the question that was raised here, the court says:

It appears that on the 23rd day of December, 1889, he was appointed deputy constable for Manor township. \* \* \* While we think the learned judge below should have affirmed this point, we do not see that its refusal could have injured the defendant. While not an officer, within the meaning of the act of 1860, it does not follow that he may not be convicted of extortion. Extortion, at common law, is the unlawful taking by any officer, by color of his office, of any money or thing of value that is not due him, or more than is due, or before it is due. In general it may be said that any officer, whether he be a federal, state, municipal, or judicial officer, and every person occupying an official or a quasi official position, may be guilty of this offense. In England there is an instance of a conviction of a church warden, and of a collector of a post horse duty, and that an attorney is an officer of the court, and may commit extortion. Any person who acts as an officer and has assumed an officer's duties cannot avoid liability by pleading the irregularity of his appointment. If there was extortion in this case, it was done under color of office, and, under all the authority, that is sufficient to sustain an indictment at common law; and for this the defendant may be convicted, if the evidence justifies it, even if not liable under the statute.

Volume 12, page 579, of the American & English Encyclopedia of Law says:

*Liability of Deputy.* A deputy, as well as his principal, may commit the offense of extortion and may be held liable in either a criminal or civil action therefor.

It cannot be used as a defense that he was directed by a superior officer. It is a fundamental principal of law that no person shall receive or follow instructions from any other person which leads to a violation of any law, acting under the direction of another. The twelfth Encyclopedia of Law and Procedure, page 159, says:

It is no defense to a criminal prosecution to prove that the accused committed the crime under discharge of his duty as agent or employee of another person, for the command of a master to his servant, the principal to his agent, or a parent to his child will not justify a criminal act done in pursuance thereof.

And that is also found in the 6th American & English Encyclopedia, page 299, which is the practical definition of the law:

A person who is acting under the authority of a superior is guilty of his acts, if illegal—if ordered to do so by his superior. And one who is acting as agent for another cannot escape the consequences of a criminal act by showing that he did the act for and under the direction of his principal.

Another point that may be brought up and has been urged here is the question of custom—that by reason of a custom in the secretary of state's office, it is justifiable. It sits ill on any one to say that because this extortion has been committed before, that it is therefore not criminal, that it has been followed out in pursuance of a custom followed in the office. If it is the custom of people to violate the law, he cannot plead it as a defense. That very question was decided by the supreme court in the 8th Utah, page 35, in the case of the People of the Territory of Utah, respondents, v. James T. Monk, appellant. The prosecution was for extortion. The defendant in this case was convicted on an indictment for a misdemeanor for demanding and receiving illegal fees for recording a mining location, as recorder for the Big Cottenwood mining district. By the custom of local laws of this mining district, adopted by the miners, the fee for recording a mining location claim was \$3. The defendant, believing he had a right to demand and receive \$3 for such services under the law, as he understood it, demanded that sum, and received it under protest of the party paying it. Under section 5442, the same act, the county recorder's fees for the services performed by the defendant is seventy-five cents. Under this state of facts, together with some others, not considered material to this discussion, the court said:

The learned counsel for the defendant claims that defendant received the payment of the \$3 fee, believing at the time that he had the legal right to charge and receive it, and that, consequently, he would not be criminally liable, even though the fee demanded was in excess of that allowed by law; that, because of the defendant's good faith and honest belief in his right to charge the fee, no criminal intent existed in his mind, and without this criminal intent, he could not be guilty of the offense charged.

The supreme court said further:

But this rule is held not to apply to a mistake or ignorance of the law, for in general every person is presumed to know the law of the country in which he lives.

It is presumed that a man knows the law that governs his conduct in his own office; he is presumed to know the law obtaining in the office in which he is incumbent. Reading further:

Indeed, the strongest authorities cited by the learned counsel hold that where the law which has been infringed upon was settled and plain, this maxim may be supplied with vigor. In this case the statute plainly fixes the legal fee. Nothing is left to surmise or uncertainty. The miners of this mining district had no right to make rules contrary to the laws of the United States or of this territory, and the defendant was bound to know what the law was. To hold that each per-



son called to account for a violation of a penal statute has the legal right to place his own construction upon the meaning of such statute, and claim immunity from punishment for its violation because such usage or custom has grown up in violation of the statute that he believed to be the law, would in effect nullify and render nugatory many of the criminal statutes of the territory, and render each person who has violated the law the sole judge of his own guilt. There is nothing in this case to bring it within any exception referred to by appellant's counsel.

The same rule is announced in the 17th Massachusetts, page 411. In that case there was an action brought to recover an illegal fee and a penalty of \$30 for demanding and receiving of one George Lincoln greater fees than are allowed by statute for the copies of the papers in a certain action which had been tried before the said Shaw, and from whose judgment therein the said George Lincoln had appealed. The evidence offered by the defendant showed that certain other officers whose fees were fixed by the same law were more than the law allowed, and that was properly rejected by the court. Quoting the exact language:

It had no tendency to justify or excuse the defendant. If it were to be otherwise held, the consequence might be a combination of officers, and the illegal acts of each would always be excused by the illegal acts of the rest.

In other words, if that were held to be the law, Sam Nichols, if prosecuted, would say that it was the custom of Schively to take it, and Schively, if prosecuted, would say it was the custom of Nichols to take it.

That in a general way is the law of the case. I will not spend a great deal of time in discussing the evidence. So far as the first twenty-three articles in this case are concerned, the defendant has convicted himself upon his own testimony. He admitted the facts practically in his answer; then he supplemented his answer and drove every nail of the prosecution home in his own evidence here. The question is simply whether there is a violation of the law. Mr. Schively was a member of the legislature, helped to make the law under which provision he is now being prosecuted. He is a man who has manifested to this Senate a very good knowledge of public affairs. He understood and can interpret the statutes along with most any attorney; clever in the use of his ability to pick flaws in most any sort of proceeding, and it certainly lies ill upon him to say here, "I did not know what the law meant."

During the time he has been incumbent, according to his own testimony, something like 182 companies have come into the state. How much they have paid no one knows; all his record shows is the \$35 fee; no one but himself and Sam Nichols and the people who paid the money knows how much he got or what he did with it—probably spent it; we don't know, can't tell.

In support of these different articles the evidence, as I have stated,

is practically admitted. We produced here depositions which were introduced under articles 2, 3, and 4 which substantiate every other article in that impeachment. The ruling of the court was that we did not sufficiently describe the offense, and the demurrers to them were sustained.

The Senate knows the circumstances under which the articles of impeachment were prepared. At that time there were certain people here who believed that this office should be abolished and the question not tried out on its merits. As a member of the legislature at that time, I used what little influence I had against the passage of that bill. I thought then, and I believe now, that it was not fair. At that time there lacked but a few votes of its passage, and it was under consideration by the Senate at the time the committee was sent out to prepare the articles of impeachment. Mr. Sparks, Mr. Meigs and myself were on that committee—Manager Meigs was not on that committee; that is my mistake. We took the evidence we had, and as hurriedly as possible we got the articles together and returned them back to the House. We did not have time to test the articles under the strict rules of criminal law, and we believed, and we yet believe, if you please, that we complied sufficiently with the rules that any criminal court requires of the prosecution when we informed the defendant in ordinary English language of the things we charged him with. We endeavored to make plain the language used in those articles as to what we were accusing this man of. The court sustained the demurrer, however, but admitted the evidence under articles 2, 3, and 4, and it is undisputed and cannot be disputed that it is the truth. The depositions prove all of these facts. The testimony is practically undisputed. Mr. Schively testified himself that they made a flat rule charging \$200 for every examination in this state, and the only case in which they reduced it is where another company had been examined at the same time. They then prorated it. He admits himself that he never furnished a statement. He admitted that he had seen the law, and it is admitted that he helped to make it.

Article 17 charged that he charged \$100 for reading over a report which was handed to him by Evenson. The respondent endeavored to explain this as well as he could, but could not. And so far as his contention that it was a matter between himself and the company, that contention will not stand in law. He was acting in an official capacity. There was nothing between himself personally and any other person. He was not sent personally. He did not get his authority from any personal capacity; he got it by reason of the fact that he was an employee of the state; if he had not, he would not have gotten a cent of the money. We have proved all of these things, and the respondent has helped to prove it, not from his direct examination, but when cross-examined upon these matters he admitted reluctantly, as he might, that all of these or practically all of these allegations were true.

So far as articles 24 and 25 are concerned, the evidence is here before the Senate. The evidence is undisputed that he received a salary

from the state at the same time he received a salary as president of a Live Stock Company. His own testimony is that his main reason for not examining the companies in the east was the fact that he did not have time. His own testimony is that during the summer of 1906 he did have time to go off for two or three weeks to Denver; that he did have time to go to Spokane to draw his money from the Live Stock Company, but did not have time to examine these companies. He says there were 180 companies admitted. He admitted on cross-examination here that he and Sam Nichols went back east and between the 18th of September and the 17th of October, a period of three weeks, they examined some thirteen companies. Cutting out Sundays, that is eighteen days. The record shows he examined three companies in one day in his trip east, on an average of one company and a little better for every day. Now, it is perfectly reasonable to believe that if he had taken a few of those trips east, he could have examined those companies in two or three months at the outside and examined them in a proper manner. He knew that the law required him to examine them, or he wouldn't have examined any of them. He has brought forth the excuse that he has done this under a departmental rule which he himself helped make. If he made this rule and acted under this rule, it is contrary to law, and even if he did not make it with the intention of violating the law, the fact that he did make the examination in violation of the law is sufficient. It is a matter of common knowledge to every one here, the relations of Sam Nichols and Schively in the secretary of state's office. Sam Nichols, verging on his eightieth year of age; Schively, a man many years younger, active in the business world; Schively, a man who did not pay a great deal of personal attention to anything other than to the details of the office; Schively, a politician—a man who is much among the people, having a good time, a man of active disposition. It is very clear to every one that his endeavoring to hide behind a departmental rule is a subterfuge. He comes into court and endeavors to shelve the blame onto Sam Nichols.

We are not here defending Sam Nichols. He realized the criminality of the things which he knew were true, and he possessed the manhood to resign and go back into private life, where under the facts he should go. Schively was a deputy at that time, equally as guilty, but believed that he could beat the case in some manner and he stayed to try it out. No matter what may be said against old man Nichols—as I say, we are not here defending him, but it must be said in his favor and to his credit that when these facts were called to his attention that he had been a party to the violation of the law, when as between fair-minded men he was not as guilty as John Schively, that the old man then stepped out of his office and permitted his successor to be appointed. I believe it is one of the most unbecoming things that the respondent has done in this case to try to shove the burden and shelve the responsibility of his criminal conduct upon his co-ordinate in the office. The evidence is practically undisputed as to

article 24. He admits he got money from both places. On cross-examination he admitted that he knew, or that the condition of the Live Stock Company was so unsatisfactory that he made up his mind to get out; that he could not put it on a proper business basis; that there was friction among the officers and the employees; that they were not business men, and did not seem to understand the conduct of that company. Admitting all those facts, and knowing as he must have known that company from its beginning, he turned around three or four weeks later and wrote to a man in Everett that that was one of the most stable and reliable companies that he had knowledge of. The letter is in evidence and admitted—leading other people to do business with that company when he himself knew that it was not a company that he could recommend to any one.

As to the evidence on article 25, there is arrayed here on one side the evidence of several people. There is arrayed on the other side the evidence of John Schively. These men who testified here for the state did not always testify exactly the same, though the general lines were similar. That is an indication of truth. It is a rule well known to courts and lawyers that when witnesses come before the court and testify substantially that certain things occurred and do not and will not testify that all of the details are similar, that that evidence carries the greater weight of truth than if the witnesses undertook and did testify that the details all the way down the line were the same—because that shows, taking into consideration that the memories of men are not infallible, in all probability these details have been worked out among themselves. But our witnesses did substantially agree upon all of these propositions. Ward—no one undertook to testify here that he was not a truthful man. Perhaps he was a member of that corporation that went defunct. No one—Mr. Schively himself—would undertake to say that even Schrock was not a man upon whom he could not rely, until after the noon recess he found out he had made an admission that would probably hurt him and came back on the stand and said that he did not mean to say what he did say and changed it. Schively said that his deal was made for the membership in Murray's office, or practically consummated there; that the only thing left for him to do was to go home and adjust his affairs. They subpoenaed Charlie Murray, the only third man who was present at that conversation. They brought him down here and put him on to testify as to an entirely different matter and did not touch upon what occurred at that office, knowing that unless they touched upon that matter on direct examination I could not cross-examine him on it on cross-examination, under the rule of law that you are not permitted to bring out testimony on cross-examination upon matters that are not touched upon in direct examination. The fact that they did not do it and did not call the witness when they subpoenaed him and he was here, I believe is some evidence that if he had been called upon to testify, his testimony would have been unfavorable. I don't think there is any

question in the minds of the senators present but what Schively signed those notes. He finally admitted himself that he would not swear that he did not. Contradictory to that is the testimony of all the other persons who testified that he did. Mrs. Ward, who is a business woman—showed here that she was—was an employee in the office for some time; testified she saw the signature on the notes. Schrock said he saw him sign the notes at the meeting. Copeland said they were signed there at that meeting. That seems to me to be conclusive that he did. He himself will not deny it. He was intoxicated that evening, he claimed. We did not attempt to humiliate him by showing here anything touching upon the personal side of that man's life, but when he found that it was probable that we could prove that he signed the notes, he endeavored to evade the responsibility of it by saying that he was probably intoxicated at that time. He testified that for three months he was president of that company and then made the shameful confession here that he, a business man, was three months president of that company and never looked at his own account in the ledger. Now, it is a matter of common knowledge among business men that if a person is working in an office on a salary and receiving a salary or compensation, he is occasionally going to look over that ledger and see how his account stands. Mr. Schively testified that during those three months he never did. At the end of each month he was credited up upon a commission basis. He would have known that and could have complained if he had looked in that ledger. He testified this way, that for three months he never did. It seems to me that that testimony will not and cannot be believed by any fair-minded man. He testified that he did not know that this matter of millage compensation during the time he was president was ever brought up. Now, Mr. Schively was probably the best business man in that aggregation of individuals. I believe that that is probably the fact. He testified that he never knew anything about the millage basis. Now, the testimony is undisputed and he admits it, that he qualified for office on August 4th at a meeting of the board of trustees. You will recall I brought his attention directly to that; he said he was there when the meeting commenced; he said he was there all during the meeting and when the meeting ended. And when I called his attention to the fact that in the minutes of that meeting there was a resolution which said that he should receive the same compensation that Ward had been receiving, he immediately went back upon his old defense—that he could not understand it and did not know what it meant. Now, it seems to me that it is apparent to any man searching for the truth that if he was present at that meeting and that resolution was placed upon the books at that meeting, he must have known it. The evidence shows that at that time he was present, and said he presided at that meeting. It seems to me to be unbelievable that the parties outside would have put that resolution—sneaked it, if you please—on the books at that time and he not knowing anything about it. The resolution appears the same as any other of the pro-

ceedings of that meeting. The evidence shows that he checked over the account. He comes up here before this Senate as a business man and tries to testify to the Senate that old man Schrock, who showed here plainly that he did not have any knowledge of business affairs, who is not familiar and could not have performed the ordinary business duties incumbent on him, dictated to him the figures which he wrote down in pencil on the foot of that sheet. In those figures, which he admitted he made, he used the figures on the millage basis. He had made computations there in which he had used the sums that were credited him at the end of each month on a millage basis, sometimes running under \$600.00—\$563.00, \$578.00 and such as that. Schively made computations with those things in them and then tries to testify to the Senate that he did not know what they meant. If he had been paid on a flat salary of \$400.00, why would all of these little odd checks be standing in there? It seems to me, in the ordinary course of business, if he would receive flat salary, he would not have any checks for \$100.00, \$200.00 or \$260.00, as in those accounts. It seems probable that he would have received his money as a flat salary. Another thing that is highly improbable, even if there was not any testimony against him, is this: Schrock was not familiar with these accounts. When I handed him up the ledger here, if you will recall, and asked him to turn to his "Bills Payable" account in his own ledger, he honestly and I believe truthfully said he did not know there was that kind of an account in his books. Schively testified here that when he settled up with Schrock, Schrock never went through the ledger. Schrock could have no knowledge of the amount coming to Schively. The most natural thing a man could do under those circumstances was to go to his bookkeeper, who was right there, and ask him how about this account. Schrock says he did do that. The bookkeeper says that he did do that, and he drew off the statement of account and handed it to him. But Schively said he had the settlement all with Schrock in the next room, on the basis of the memoranda book he kept in his pocket, and which was lost and he has not accounted for the manner in which it was lost. Now, it seems to me that this must appeal to any fair-minded man, that the theory of Schrock and Hunter as to the manner in which that settlement was conducted is the truthful way in which it was conducted. It is the business way that it would have been done in any business that might be conducted by even an ignorant man. Schively testified that Schrock borrowed some money from him. He had to do that in order to make that account figure right. He would not admit that there was ever any commission in it, although the ledger showed that he was credited with some occasional commissions on the outside; but in order to make that account figure out all right, he had to get that \$30 in there some way, and it would not do to admit it was put in on a commission basis, so he just swore it was some money Schrock borrowed from him. They were doing a business of \$300,000.00 per month, and Schrock borrowed some pocket money of him, \$30.00, and

paid it back to him. It is absurd. Another thing is this: The testimony is undisputed—why did Schrock borrow the money? He states that Schrock was the only man who could draw any money. Schrock could get money from the bank any time he ever wanted it, because his signature was good at the bank always. Now, if it was, why would he go to Schively and borrow \$30 when he could draw a check any time and get the money himself? It seems to me that the theory of Schively in that matter is absolutely untrue. He testified here that he was not above doing things that were not exactly right. He testified that he did insure, in order to make himself eligible as a stockholder—he insured what is called by my Brother Israel “a supposititious horse,” a horse which really did not exist, but had to exist in order to permit him to become a member of the company. He was not above doing that, although it did not represent anything, and he put that in the account. The horse never existed, but was insured on a supposition, and there could not have been any money collected if the horse had died, because there was not any horse. And yet he says in the account that he charged up against Schrock the premium on the insurance of a horse that he himself admitted never existed. Now, is that reasonable? That seems to me should stick in the conscience of any man that would come up here and try to testify to it. Schively may have been intoxicated on that evening. I don’t know. He knows. The testimony is from his own lips that the most of his checks were cashed around at different places in Spokane where the necessities could be procured in the event that he desired to indulge in anything of that kind, and the probabilities are that he occasionally did. Now, as I say, all of these things are testified to by Ward and Mrs. Ward and Schively and Copeland. Now, I want to call your attention to Copeland just for a moment. That man has not but a very slight knowledge of business affairs. He came up here and testified and appeared to be what he actually is—a common, ordinary working man, who had no more business perhaps with the affairs of the company of that kind than any one, but he did testify to what he knew, although counsel, with his usual skillfulness, endeavored to tangle him and enthrall him, yet he was able to testify that he was there that night and that Schively executed those notes and that it was a deal between Schively and Ward and the company had nothing to do with it. He had no reason to lie about that. Another thing I want you to consider is this: In considering the witness’ testimony, consider the interest that he has in the outcome of the case. His testimony is under the rules entitled to more weight than a man who is interested in the outcome. It does not make any difference to Copeland what is the result of this case. Schrock is under indictment for embezzlement. Schively testified that he was. Now, if those men come over here to testify, if this man be guilty, it will tend necessarily to incriminate his own brother-in-law and the other witness under indictment. It is evident his motive, if possible, would be to shield this man, because if he must testify in connection with that company, then

they must go into things concerning themselves. But Copeland did not have or could not have any motive to tell what was not the truth here, and particularly to lie as to something that would injure the other man. E. C. McDonald testified about those notes. There is not a scintilla of testimony here that Schively's name was not on them, and E. C. McDonald was hired as an attorney to look into these notes and see what their legal effect was upon Schively. Schively knew long before the grand jury occurred that he was in trouble as to those notes; that the manner in which those notes were drawn up was going to determine to a great extent whether or not he had been guilty of embezzlement. And yet he has the nerve to testify that he went up for the purpose of investigating the legal effect of these notes, and had the notes in his hand and never looked at them. Does any fair-minded man believe for a minute that story? It is not true and could not be true. Take yourself for instance. Put yourself in his place, going up there to investigate those notes to find out if you are liable, if they are payable to you or what not. Certainly, if you had the notes, admitted you had the notes in your hand, you would certainly look at them to see whether or not you were liable for them or whether or not they were payable to you. Another thing he must have known about those notes: One of those \$400.00 checks that went to the bank to pay them has Schively's signature on it, which he admits. McDonald himself seems to have been afflicted with a slight loss of memory. He was retained as lawyer in the case to protect Schively, and the notes were brought in to him to look at them; and all he could say was that they were payable to Ward and could not tell who they were signed by. I do not charge McDonald with willfully stating what is not the fact, but it is a very great place for a witness to take refuge. Whenever you are driving him up to the point to where he has got to admit something that is going to go against him, he will invariably state that "just what that was I don't remember." Those among us who are lawyers and have had experience of that kind and those among you who have had occasion to participate in litigation know that when a witness is up against it, so to speak, on any other avenue of escape, they will invariably say they do not remember what it was or do not remember just exactly how it occurred. And that was true as to those notes. Now, the grand jury was called, and much has been brought here to endeavor to discredit them. The grand jury is made up of the citizens of our community, and are probably the same as the citizens of any community. We know that no man in whose veins flows the blood of a human takes pleasure in returning an indictment against any other man which is going to cast upon him humiliation and disgrace. Humanity revolts against such action. And for any one to say that that grand jury jerked a man in there before it and refused to give him a chance to be heard and went out and returned an indictment against him on a very complicated charge, when there was no evidence to sustain it, is stating something that is contrary to the reason and the ordinary



make-up of any individual. The prosecuting attorney knew that if that indictment was returned there was going to be a big trial before that man could go to the penitentiary, if he was guilty. We know that these prosecuting attorneys do not, unless they are positively assured, or to a certain extent very reasonably assured, that a conviction can be had, return an indictment or arrest any one; because it does not redound to their benefit to put their county to a great bill of expense and then have an acquittal returned, and the papers publish the facts that the evidence did not justify it, besides taking up the time of the courts. Davis testified here—and I think he impressed you all as not a man who is of a vindictive character—that they had Schively before them a day and a half, and he testified in the day and a half he was before them he never got a chance to talk. Now, I say this, that if there is any lawyer in this country that can shut off John Schively on the witness stand from telling his side of the story he is a better lawyer than I have ever had occasion to cross swords with in any legal controversy. We know that. He demonstrated that and proved that conclusively on the stand. That grand jury was investigating offenses committed in that community. Reports had come to them about the Live Stock Company, that these men had been paying themselves excessive salaries and commissions shortly before they became insolvent, and that farmers had claims that were unpaid by reason of that trouble. They were investigating that as a matter that they had a right to do. They came to these three notes here, payable to the Fidelity Bank. They called in Schively and they called in Schrock and Copeland and Hunter, and Farnsworth, if you please, who is not here. Then Davis testified on this stand the last moment of yesterday's session that on returning that indictment that they had all the witnesses that were here and that they had Farnsworth and Hunter besides, and that they bore out the statements of Ward that these notes were given by Schively to Ward. All of these men testified that Schively signed those notes, and that they were given by Schively to Ward. All of these men testified that the company had nothing to do with the transaction, and it was simply between Schively and Ward, and then Schively came in—one man alone—and undertook to flatly refute the whole thing. It seems to me that a grand jury that would not under that showing of evidence indict a man for perjury would not be doing its duty to its community. He never told them that he was uncertain of those notes. He didn't tell them he might have signed them and he might not. No, he went before them, according to their testimony—and they have no particular interest in this case; they will soon be released and go to their respective callings—they testified that he flatly and positively stated that he never signed those notes and had never seen them, and didn't know anything about those checks upon one of which his own signature appears. It seems to me that any grand jury that would not under those circumstances indict that man is not a grand jury. It is not, as respondent dramatically stated to this Senate, an outrage upon any

citizen. It was no such a thing. He was called there to tell the truth and did not do it. If there is any senator here who believes that during all of that man's testimony on that witness stand he did not commit perjury a dozen times, then he, in my judgment, does not understand the testimony of the witness. If he did here, he would there. And instead of being an outrage upon any citizen to be indicted for perjury, that grand jury did its duty, because I am satisfied from this evidence that he was guilty. This dramatic effort on the part of respondent does not appeal to sensible men who are sworn to do their duty under the facts. It has been some time since the citizens of Olympia were treated to such a dramatic attempt as made by the respondent upon that occasion. Not since our friend Billy Sunday, in religious fanaticism, trod the boards of our local theatre have citizens of this community seen such an outburst of feigned emotion. I think it is just about as futile an effort as could be made in his own defense. When a man appeals to emotion and not to your judgment and reason he has a weak case. We are not here appealing to the sympathy of this Senate. We are here upon the law and the facts and put them to you under your oaths. That is all. We are not asking for the prosecution of any man. We are simply asking that this man be tried upon the law and the evidence, and if the law and the evidence, considered fairly and impartially, say that that man should go forth exonerated, it is your duty to see that he goes forth exonerated, and if under the law and the evidence you believe that man does not measure up to the standard prescribed by the constitution for an incumbent of an office, then it is your duty under your oaths to see that that office is vacated and that he be not permitted to hold it.

I could dwell upon the facts of this case for many hours. There is one other matter to which I wish to call your attention. Stress was laid upon it here. It was the execution of the application for bond by Schively. The evidence of these bonding companies I don't believe disproves the contention of the state. All of these men were bonded. All of them were on a millage basis. The applications of some of them, as shown here, says commissions. One of them, Schrock's brother, says himself he is on a commission basis. Another one of them, Hunter—one of the trustees—says nothing about salary; simply says he was to get a millage on \$300,000 insurance, which was the average for some months; absolutely nothing about salary. The man who testified here the other day on the same proposition said that quite frequently companies executed bonds when men were on a commission basis. There is the evidence of these men that actually were on a commission basis, and they were bonded. Now, when these bonds were written these people were talked to, very likely. Their methods of securing salary were discussed. Every one knew in Spokane where these bonds were written, what the Pacific Live Stock Company was, and how the officers got their salary; how it was paid and the manner of it. And to say this was written in on a flat salary is saying something that cannot appear from the evidence. I don't believe that

Schrock, Hunter, Copeland, and Ward would misstate the facts in order to get a bond. They were not particularly anxious to bond themselves, because they had the whole thing in their possession. Why should they tell a lie in order to get themselves bonded? It is not a thing that they would do, and I don't believe they did it.

Another thing I desire to call your attention to—referring back again to the Ward-Schively controversy: Why would the company buy Ward out if they could put him out by a vote any time they wished to do so. They would have no object in doing it, and it is not probable that they would pay \$1,200 of their own money out when they were not required by law or by agreement to do so. These were simply trustees, elected by the stockholders, and they had nothing to sell except their good will. The company was not required to keep them unless they wished to.

I desire you to consider the law and the facts as they have been presented. This is not a question of partisan politics. It is not a question of getting rid of any man because he is a disturber or because he occupies a position that is dangerous to the political views of anyone here. That does not enter it. It is a prescribed duty for us to come before this Senate and demand a judgment against a man under these circumstances, and under our oaths and under your oaths and this evidence there is absolutely nothing else for you to do.

Your oaths specify: "I solemnly swear that in all things pertaining to the trial of the impeachment of John H. Schively, now pending, I will do impartial justice according to the constitution and the laws, and according to the law and the evidence that may be produced before this body upon the hearing of such proceedings. So help me God." Under your oaths it is your stern duty, if this evidence shows that this man is not fitted for that office, to remove him, and you violate that oath which you took if you fail to do so, and I believe that we have under this showing and under the law which I have read to you and under the evidence which you have heard, and which has been put in impartially and fairly, keeping in mind the constitution of this state and your oath of office, you should return a judgment of conviction against this man.

Now, just this thought. It is necessary in order to convict this man or remove him that he be found guilty upon some of the articles of impeachment. That is the way that you will evidence to the people of this state your judgment whether or not this man is unfit for this office. The acquittal of this man will have a lasting effect upon our state. If it goes out from this Senate along with the evidence that has been produced here that we believe a man who has done these things is the kind of an officer that we want, it will have a far-reaching effect upon the political integrity and the official honesty of those who will be hereafter elected to office. If it goes out from this Senate that the State of Washington when it finds it has in its midst a corrupt official, does its duty and removes him from office, then hereafter there will be no similar practice. But if this is tolerated in

one department, it must as a matter of precedent be tolerated in the others. It is therefore a matter of far-reaching importance that when it is called to your attention so plainly and so forcibly and admittedly by the man who did it that these things have been done, then it is absolutely incumbent upon you, under your oaths and under the constitution, and under the principles of justice to which I have referred and which will last here when this session has adjourned and we have gone forth—it is your sworn duty, and you can do no other than to return a verdict of conviction upon some of these articles. I have no personal pride in any of them. I have participated in the controversy at every moment that it was necessary, under my oath as a representative of the people. It is your duty to return a verdict of guilty on some of these articles, in my judgment, and if you do not you are shirking your duty as tryers of this case.

By SENATOR WILLIAMS: Mr. Chairman, I move that we take a recess until 1:15.

By THE PRESIDENT: It has been moved and seconded that we take a recess until 1:15 this afternoon. All those in favor of the motion say "Aye"; opposed, "No." The ayes have it.

At this time a recess was taken until 1:15 o'clock p. m.

## AFTERNOON SESSION.

The Senate, sitting as a court of impeachment, convened at 1:15 p. m.

By SENATOR WILLIAMS: Do I understand that Senator Rydstrom was excused?

By THE PRESIDENT: Senator Rydstrom stepped to the long-distance telephone in the back room and will be recorded as present. Mr. Israel, you will proceed.

By Mr. ISRAEL: May it please your honor and gentlemen of this court, it would probably be best to take up this discussion at the place it was laid down by the counsel of the managers at the close of their opening argument to you. It is true that a momentous question is before you; it is true that your acts in this body within the next forty-eight hours in recording a verdict as to each of these articles of impeachment will be tested by your constituency from the, and under the law and the evidence that has been introduced. It is equally true that at the close of this case, with the exception of this charge of perjury, which I desire shall be considered as and separate from what I am about to say, and from what I shall say for some little time to come, until I reach it—that with the exception of this charge of perjury (which arose and was put forth against this man after your investigating committee had commenced their investigation), that

when we closed this testimony there was not a thing or a fact proven against John Schively that was not known and published broadcast through the newspapers of the land and of this state before he was elected to the honorable office that he now occupies. Your newspapers charged him in his campaign with having been paid both as insurance commissioner and as an officer of the stock association; and it was not denied. Your newspapers charged him with the collection of these advance fees and flat rates in the office of the secretary of state in that campaign. You interrogated him before a committee of the legislature—some of you sitting here were on that committee—of which Senator Veness was chairman, regarding these very same flat rates, and certain of you who are sitting here as his triers (one of you at least) up and down this broad land in that campaign of 1908 charged these same things to the people who sent you here. There it nothing new in all this evidence, saving always this perjury charge—nothing that was not known when John Schively was elected as insurance commissioner of the State of Washington. Nothing has been presented here before you in addition to that, and this I recall to you before discussing the question as to whether anything wrong was done in what he did do—anything *intentionally* wrong.

The people of the State of Washington, with that knowledge before them, sent John Schively back as insurance commissioner with fifty thousand majority. With the same enemies and the same influence at work then that has accomplished the assembling of this extraordinary court he was sent back by the people that made you senators, with fifty thousand majority; and I say to you that one of your last acts in this Senate, if I understand your legislative doings aright, before you adjourn, will be to provide for the printing of this record in order that it may be perpetuated for future reference; and, I presume, in order that your constituents shall have a check whereby to examine your votes as recorded as to the justness and the righteousness of your finding after you have recorded it, I want to see that record printed; I want to see it go out among your constituents and throughout this commonwealth, confident that when at last for the first time, the people are afforded a chance to know what the evidence against John Schively was, that with his acquittal fifty thousand people will say "Well done, good and faithful servants."

Before going into a review of this case with you, I feel I cannot pass without briefly sketching through the political history and calling your attention to the pitiful condition that has existed in the trial of this case and along down the line from the day that the people of the state, on the 3rd of November, 1908, said with that fifty thousand majority that John Schively should remain as insurance commissioner. From that day to this hour not a man, woman or child in the State of Washington, wanting to know what John Schively was accused of, or what the evidence against John Schively was, have been able to learn without they took the one great daily of the opposite political faith of the majority of this Senate, or went to another great daily across

the line, out of the commonwealth, in a sister state. And you know, day after day, as you sat here during a recess and picked up any of your own state papers, with this one exception, and read the reports therein contained of what is supposed to have happened the day before, you found every line and every paragraph expurgated that would make to any defense of John Schively. You found the same policy every day; and you found it today and you will so find it tomorrow. It is a pitiful condition and an outrage upon the people of the state, who are entitled to know what transpired in this Senate, and you cannot gainsay the truthfulness of the statement. So then, if it is ever known to this same constituency who differed with you in your charges against the deputy insurance commissioner, it will be known from this record for the first time; and when it is once known that same fifty thousand will answer, "Well done."

I want to say in my presentation of this case that I have listened patiently and very closely to the opening argument of the honorable gentleman who presented the state's reasons as to why there should be a verdict of guilty in this case. He is an able lawyer, and I felt sorry to see him have to argue in a circle; I felt sorry to see him have to retreat from one position to another by force of his own argument, and I forgive him for any misstatement as to the evidence, for we are all prone to that. We do not remember the evidence; we attorneys, in attempting to sum up honestly, will make mistakes as to just what the witness testified to in attempting to re-state it, and it is up to the tryer who heard the testimony to adopt or reject the statement. But as to the law—the law of this case—I felt sorry to think any lawyer would have to stand and attempt to juggle with the law to accomplish a conviction. I came before this Senate representing John Schively, the 11th day of August, not asking for mercy, not asking anything but justice; asking to be tried by the law; asking that the evidence be weighed with the law. I have not changed a bit, and I am still crying for the same application. If in my zeal I appear here in any wise that might be construed as an appeal to your sympathies or your mercies, I repudiate it now, even as I did then, notwithstanding that zeal and forgetfulness is caused by the mental picture in my mind of the awfulness of all this, from which I cannot escape. But I want to stand upon the law; I want to stand upon all of the law; I want to stand and be measured by you as you would wish to be measured if you were on trial under the same circumstances; and in this presentation of the respondent's case—without egotism, impersonal—if, when I have concluded my examination for you of the law that has been cited here this morning and have given you the law as it is in the books that govern this case, and have drawn the distinctions that draw themselves to any legal mind between that law and that which I shall read to you, showing that the first has no application to this case—if I don't do all of this before I have concluded, convict John Schively. But if at the conclusion of my argument the law is as I stated—that he has committed no crime, misdemeanor or malfeasance in office—follow the

oath that you took and acquit him. If it is not demonstrated to a certainty and beyond a moral doubt to any man in the room, lawyer or layman, that John Schively was not a public officer when these alleged offenses were committed, convict him—not as a matter of excuse, but as a matter of applying a legal punishment to him.

I will show you first that Samuel Nichols and Schively committed no offense against the laws of the state; did no impeachable offense, when they promulgated the departmental rules that they did, but I will further show you that if it had been an offense, Mr. Schively was not a public officer when it was done.

Counsel opened this case for you upon the statement (and I take it as now settled in this case, without any further gymnastics with the law, that they have finally concluded to themselves, and so solemnly stated to this Senate, that they had worked out this as a legal proposition) that a man may be impeached for high crimes, misdemeanors or malfeasance in office, though those malfeasances, high crimes or misdemeanors occurred in a previous term of office. If my ears hear aright, they have also conceded that which has always been the law: that you as a court of impeachment are only to deal with high crimes, misdemeanors, and malfeasance in office *by an officer*. Now, it has been my contention, and I believe it to be the law, and as the authority to the contrary is so flimsy (the mere argument of the managers on the floors of legislative bodies sitting as courts of impeachment)—that it is not true that a man can be impeached for high crimes, malfeasance in office, or misdemeanors in office in a past or other term of office or for any committed at any time that is outside of the statute of limitations. But as they eliminate that question in this case, for the purpose of meeting their argument—not conceding it to be the law, but for the purpose of meeting their argument—I am willing to concede, for the purpose of this argument, that you can impeach a man for high crimes and misdemeanors committed as an officer during a previous term of office. That drives these gentlemen to the position of asserting, as they asserted in the arguments this morning, that John Schively was an officer during his deputyship with Sam Nichols. My first task, when I come to an examination of the law as to that claim will be to utterly put to route the contention that the position of deputy insurance commissioner prior to the Miller bill—prior to the creation of the office of insurance commissioner—was a separate state office, that is, during the time Schively was with Nichols. It was in no sense of the word a public office, but a mere agency and employment, and this I will demonstrate to you beyond a peradventure with the law itself, and with some of the authorities that have been referred to by counsel. But I have not reached, gentlemen, to the point where in deference to an orderly presentation of this case that law should be presented.

I want to go back to the beginning, as counsel did when he spoke of my challenge to certain members of this Senate to sit as tryers in this case. Two at least of you had expressed in writing your opinion of

his guilt; one of you had expressed it openly upon the street corners and in corridors as positively as an expression could be made. A dozen or more of you had adopted the suggestion of the governor of this state that Schively should be summarily dealt with upon the report of the committee—not even afforded the constitutional right of trial guaranteed him by the constitution, but that he should be summarily removed by the abolishment of his office. You also, by some force or power, committed yourselves upon the floor of this body to a vote in an attempt to abolish that office. If any voice among you was raised at that time with the argument that the office was unnecessary to the State of Washington, I failed to note it then, or hear of it since. But at least it was generally understood and a matter of public knowledge, or public opinion, rather, that you were abolishing the office, not because there was no necessity for the office; not because it was not a useful office to the people of the state, but you were going, as expressed in the bill itself, to put the identical labor and work of the office and the principal compensation into the hand of other officers of the state, so as to get Schively out of office. Now, with that attitude and with that attempt you were challenged as not being in a condition of mind to try this man fairly and impartially under the law, because of the constitutional provision under which the articles of impeachment were found—you have heard it time and time and again, but it is well to keep it in mind, the exact language: Article 4 of the constitution: "The impeachment shall be tried by the Senate, and when sitting for the purpose the senators shall be upon oath or affirmation to do justice according to the law and the evidence." I did not conceive as a lawyer with some experience in the field of criminal law, and its application—I did not feel that it was in the realm of the possibility of human mentality that a man could so thoroughly make up his mind as to the guilt of another, or rather that a man had, after he had so thoroughly made up his mind as to the guilt of another that he would be willing to destroy his office for the purpose of getting him out of it without a trial or constitutional right afforded him as it is written in the constitution—yet thereafter so far disposes himself of all that went to form that opinion as that in the future trial of such man he could return his verdict simply predicated upon what he had heard in the evidence and absolutely divorce himself from what he had previously learned upon which he had predicated his opinion before the trial. I could not conceive of a mentality that would permit of this expunging of everything and the leaving of a blank to receive the new impressions. I challenged you. In your superior wisdom you said to me that, notwithstanding all of these facts, you could try John Schively according to the law and according to the evidence. I received that verdict and that judgment and bowed to it, because I was compelled.

I have given it much thought during the progress of this trial, since this testimony has unfolded itself to this body, and I have wondered whether, with two or three exceptions (if you will pardon



me), it was not possible for these same gentlemen, when they had heard all of this evidence, to decide the case according to the evidence and not according to the impressions of what they conceived were the facts before the trial. It more deeply impressed itself on me when I considered how that opinion had probably been brought about that caused these, you gentlemen of this Senate, to attempt the abolition of this office. When my mind ran back over the facts that while this investigating committee was at its labors these same papers were giving out what purported to be the testimony that was coming before it, all of which pointed to a damning guilt on the part of Schively, even to headlines, I remember, in one of those papers, an inch long, which read, "Attorney General Repudiates Schively's Statements That He Advised the Legality of Advance Fees for Examination." When I considered that right in the midst of this maelstrom the grand jury had put out its damnable documents charging this man with perjury, which charge is now as scattered as the spots in the carpet beneath our feet, it struck me that it might be that I was wrong, and the Senate right, and that this man would be tried and will be voted upon by you gentlemen, who were so challenged, according to the law of this case and according to the evidence, irrespective of the howling of his enemies. And, I am proceeding under that theory, and if such were not the case, I would conclude these remarks within the next ten minutes. I am proceeding now with the firm belief that, notwithstanding that challenge, this hour and the hour that each senator arises to his feet to answer the awful question of the clerk, "How say you, senator, as to the guilt or innocence of John H. Schively as charged in these articles?" that answer will be according to the law and the evidence under the law. So I have the temerity and hardihood to proceed with this argument.

It may not be profitable or right to attempt to go into the political history encircling about this impeachment trial. There are certain things that are not necessary to be proven upon the witness stand by witnesses. There are certain things of common knowledge that we all know, and not necessary to be proven to us for our further enlightenment. We know when darkness comes and when light comes, when the sun rises and when the sun sets. We know where our capital is; we know where our legislatures meet. We know the outcomes of political strife. We know of the political dissensions even in our own parties. We know that all of these facts are published and are known throughout all our continent; and we all know the beginning of that which is here now, so far as John Schively is concerned. The ending—that is another matter. As well said by some one, or some staff writer, or newspaper, during the trial of this case: "The matter of the guilt or innocence of John Schively, the effect upon his future life, is a matter now of small importance. John Schively's enemies have accomplished his downfall, and his ruin; for history has

written out that no man or men who have been impeached and found not guilty upon articles of impeachment have survived the odium of the act." As well said to you this morning, among the many impeachment cases that have reached the bar of the Senate of the United States, only two have resulted in a verdict of guilty. But I say no man that ever went before the bar charged by articles of impeachment ever lifted his head again in the Union. Well was it said that John Schively's enemies have accomplished his ruin, if that was all that was sought, for the same history may be written for John Schively as to all others who have been charged in articles of impeachment, with this crime from which they were discharged and acquitted by the solemn vote of the Senate. The odium still remains; there is no discharging that; no wiping it out. So then, I do not think it would be wrongful to take a little time to sketch through the situation that has accomplished his downfall.

It were not idle to discuss the time when, through politics in the State of Washington, John Schively became at outs with Sam Perkins. It were not idle to discuss the time in the state's political history when in a fight and scrap over a senatorial toga John Schively supported Ankeny and forgot Wilson. It were not idle to sketch the influences against Schively that centered about him when it was found that he would remain Sam Nichols' deputy as long as Sam Nichols was state insurance commissioner, and that Sam could not possibly be ousted. It were not idle to sketch the scheme of taking the office away from the secretary of state and making an independent office of it, or how it was done, or how at that time Schively was before the committee, which members are in this body, and then told them of these things which are now charged against him as crimes and misdemeanors; or how the new office was created; or how the same body passed the direct primary law; and how the people, in the face of influences and the newspapers (these same papers), charging every day these same matters, swept John Schively into office with 50,000 majority; of how at the time there came a series of circumstances, including the death of a man whom I regard, and whom if he had lived would have been one of the greatest executives the state has ever seen—poor old Sam Cosgrove made it possible for an accidental executive to take charge of the affairs of the state, and afterwards the appointment by this executive of a committee whose report to him made possible acts which have resulted in the articles of impeachment that Schively is here to face—at least the part of them that yet remain.

Now then, another thought that I had in considering the situation that confronts us now, as compared with the situation that confronted us when these articles of impeachment were returned, or brought to this body, and accepted, was that in all probability many of you gentlemen whom I challenged—you senators who felt so indignant and outraged because some of these men refused to vote for the abolition of this office—were at the time actuated by, or acted under the influence that naturally would dominate any honorable or honest man, when he

believed another had been guilty of that grossest and most unexcusable crime, corrupt and willful perjury. And that was the condition that confronted John Schively at that time. That perjury charge was generally understood and believed to be true, I am sorry to say, throughout the broad confines of the state at the time these articles were drafted, to such an extent that the committee reached out in an executive way to Spokane and got this indictment and incorporated it into the impeachment—charging that Schively committed willful, corrupt perjury before the Spokane grand jury. And now, when we realize how thorough the expose has been of the rottenness of that proposition and of the very men who would even now seek by that evidence, which we will discuss later, to convict Schively of perjury, it seems to me I have a right to feel now that possibly some of you gentlemen who felt then that there was nothing to do but get Schively out of office have changed your minds, especially since hearing the incidents connected with that charge, now for your decision, after your vision has been clarified by the knowledge, that there is naught else, even if true, aside from the perjury charge, that would justify or excuse his removal from office.

Gentlemen, getting down now to the first contentions of the state, that John Schively has been guilty of extortion. Mr. Bishop, in his work on criminal law has defined this crime, and I presume we may accept his definition, as this in the criminal practice is the prosecutor's book—the author that states the criminal law by always stating it correctly in the strongest manner in which it can be elucidated against the wrongdoer. Mr. Bishop, in the second volume of 'his Criminal Law, section 390, thus defines the crime of extortion or the crime of malfeasance in office:

In the preceding volume we saw that all persons who assume official position place themselves thereby in circumstances to exert a peculiar power which brings with it corresponding obligations, manageable by the criminal law; and that they are, in consequence of these facts, liable to be indicted for malfeasance in office. Among wrongful official acts open to special reprehension, is extortion. It consists in the corruptly demanding or receiving by the person in office of a fee for services which should be gratuitously performed, or of a larger fee, where compensation is allowable, than the law justifies, implying a corrupt mind. It is not committed when the fee comes voluntarily, in return for real benefits conferred by extra exertion put forth.

The only malfeasance attempted to be charged in these articles of impeachment is extortion. And it is claimed by the prosecution that the facts that they have developed, and which have been freely admitted by Mr. Schively from the beginning, and before the beginning and at all times since 1907, when he was interrogated by Senator Paulhamus, when he was interrogated before the committee on appropriations, were extortion. Mr. Bishop defines extortion, "The corrupt demanding and receiving by a person in office" (mark the word office) "of a fee for services that should be rendered," or where the compensation is permissible, a larger fee than the law justifies, or a fee not

yet due. Mr. Bishop says in this connection "corrupt" is used in this definition of the crime, implying an evil mind; that it is not committed when the fee comes voluntarily in return for real benefit conferred by extra exertion put forth.

Now then, I am not going to dignify their argument by further reference to authority, especially the authorities read this morning by Brother Edge, taking the position that the collecting of fees in this state in advance of the performance of the duty is extortion. Why he did it, I do not know. I am going to challenge the young gentleman who closes this case to tell me, and tell these senators, why, if it were not because of the absolute weakness of their case, if it were not absolute realization that everything in the evidence under the law, every right to a conviction has been trampled underneath the feet of these gentlemen, I cannot conceive why Mr. Edge argued to this body this morning, and urged upon this body, that the collection of fees in advance for the performance of a duty which was not yet performed was extortion in this state. I cannot conceive of the temerity of reading any authority as applicable to this state; and he read both from text books and from case law. And when in the intensity of my desire to know that I was not misunderstanding his position, that I heard aright what he said, sitting where Senator Potts is now, taking notes, I went across to him and asked him, "Do you mean that to take fees in advance of performance of duty in the State of Washington is extortion?" he answered me by saying, "So states a book that you said was authority," or words to that effect. Why, way back there in the trial of this case, Senator Presby, who is a lawyer, and a good lawyer, and that fact will not be gainsaid by counsel, not only ruled but was provoked by this same assertion made by the gentleman in an objection—possibly passing on a demurrer—I have forgotten which; he announced from the bench then that the taking of fees in advance in this case was not extortion, that the common law rule does not apply. Why, every statute that we have on the books establishes—especially provides—for the payment of fees in advance. You can't make your sheriff go out tomorrow and serve a summons for you without you pay him in advance; you can't file a paper in the clerk's office in any court in the State of Washington without you pay in advance; and you can't be tried before a jury—have a jury trial of a civil action—without you pay in advance. Why the assertion was made, I do not know. Still it falls with particular force when we realize that it won't do to abandon that principle even in the face of the law itself; when we come to think that law must be held the law of this state by the Senate, even in face of the law as expressed in our statute books, or else all of these advance fee charge articles must fall to the ground. This, I suppose, is the reason that rule is being held so tenaciously to.

Now then, before considering the articles separately, this brings us directly to a consideration of the rightfulness or wrongfulness of the departmental rule made by Mr. Nichols and his deputy, as to not only the charging of advance fee, but the collection of the flat rate of

\$200. Now, John Schively has been damned and doubly damned from one end of the state to the other by those newspapers, and they attempted to work the people into a frenzy over the awfulness of his crime—not as to Nichols, while Nichols was his superior, and he was a deputy, but in Schively's charging \$200 for examining a company instead of furnishing an itemized account of actual expense as to each company; and all of the furor outside of that over the perjury charge has been directed to that question. Mr. Edge's argument this morning, wherein it was at all forcible, was directed to that question—that flat rate. That is the bugbear, and yet that is the fact that Schively admitted before the committee, admitted before the legislative committee, always admitted, admits here, and is the admission that Mr. Edge holds up as the admission of his guilt.

Now then, this brings us peculiarly, gentlemen, to the applying of the law to this evidence—and, mind you, that is all I stand here trying to ask you to do. I don't want anything else but the application of the law to the evidence; yet I stand here in fear and trembling in a realization that if I cannot in my feeble way so express myself that you will understand me, and understand the application of the law, as the law really is and should be applied to the facts, which we admit, that you may not acquit him. If I do not succeed, I fear the result: Because I recognize from the footprints that have gone before; from the manner that this case has been tried; from the manner in which it was grilled before the committee; from the theory that has been adopted by the attorney general's office all through; from the arguments that have already been made by the eloquent young gentleman who will close this case, that there will be an attempt with this same law to work a conviction. And I propose before I get through to pluck that law to pieces as having no application to these facts. Not only will it be attempted to be used to nullify what really is the law, but to furnish an excuse for violating the law under the evidence, when the verdict should be the other way.

Now, my Brother Edge is somewhat my junior in the journey through this vale of tears, though he has gotten past the age of youthful vivacity. I think he frankly stated to you that he was willing to serve where he might in this case, and was not particularly interested in the results. I am here, of course, intensely interested in battle for my client, and especially for that which I believe to be right in this matter; but I have no spurs to win; the time in life for me to win my spurs has passed. What winning I did then is all that is to be allotted to me. I, in seeking what spurs I did, was brought to a realization that the better way to try a lawsuit, criminal or civil, is to stay within the rules of the law and let the results be what they may—not to attempt to carry men, or jurors, or judges off their feet by appeals to passion. I say, in this case there are a pair of spurs to win, and I am going to forgive him in advance, because he has already evidenced in this case his ability to grow eloquent—his ability to talk in a fascinating manner. He has already developed

in this case that in him is the building promise of one of the best lawyers and advocates in the State of Washington, as years go on apace. I am going to enjoy, under the circumstances and from a lawyer's standpoint, the bursts of eloquence and the flight of fancy in which he will indulge in closing this case, and in winning those spurs; and I want to see him win them—in fact, he has won them already. Irrespective of the results of this case, those spurs are buckled on. Away back yonder somewhere is the boy's superior, who stood to the front for the first time for a while in the beginning of this trial, after this boy had done the work that had led up to it, but the pace was too fast and the boy now is rightfully back where he belongs, leading this fight, and I accord to him what satisfaction there may be in saying that every prophecy that I have sketched of him has been fulfilled and, in my judgment, a little more; and it is the judgment of one who has been thirty years in the harness. But I want to say this—tenaciously clinging still to the law and to the evidence—I asked you, gentlemen, to give every attention to those flights of fancy and those bursts of eloquence which are about to become an event; to the scathing of the "old fellow"—because that is legitimate in the closing of a case. If there is an old gray head in it, burn him up alive. I will enjoy that, too. But after it is all over, gentlemen, let us put this kind of diversion aside, get back to where we started, calmly look at the law as the law is written and the evidence as it is here before us, under the oath that has been taken to do impartial justice; to try this man under that law and under the evidence, and as well so record the vote—not by the swaying of any passion, not through any eloquent appeal, but through a realization of the rightfulness of the verdict when measured by the law.

Now then, it is charged that certain acts in the office of the secretary of state were extortionate; that it was extortion to collect the fees in advance; that it was extortion to collect the flat rate. If neither are extortion, then neither are malfeasance. If neither are malfeasance, then the defendant is not guilty; meeting these gentlemen now upon their own ground that Schively was a public officer. Later I propose to show you as a fact that none of the elements of public office is constituted in the employee who was deputy insurance commissioner. But meeting the prosecution now, for the purpose of argument, upon the broad ground they have laid down for their superstructure, all being built upon the following premises: That this man was an officer. The law demonstrates that even if he was an officer, he was not guilty of extortion; not guilty of malfeasance. I read you first from section 8376, Pierce's Code:

*Attorney General.* The person appointed to the office of attorney general of this state shall be learned in the law and shall be a qualified practitioner before the supreme and superior courts of this state.

Section 8379:

The duties of the attorney general shall be: *First*, to consult with and advise the governor and other state officers and give, when re-

quested, written opinions upon legal or constitutional questions relating to the duties of such officers respectively.

To *consult* and *advise* with the governor and *other officers*, and when requested to give legal opinions in writing. I re-read this section because of the evident attempt of the ex-attorney general to quibble and of Mr. Lee to aid him in it, while on the witness stand. Now, gentlemen, I am saying naught against John Atkinson; but he was an unwilling witness—an unwilling witness in this case. It could be accounted for by many reasons, upon many hypotheses; many reasons might be given for it. But I would have no more right to impose my imaginings upon you than you would yours upon me, or we upon each other. Suffice it that it is apparent to all that John D. Atkinson was an unwilling witness. He must have been an unwilling witness when he allowed those papers of the State of Washington to quote him all over the state with having testified before the investigating committee that he did not advise the legality of this advance fee charge; but he did not contradict it. If he did, I never saw any record of it, nor did the committee; but they allowed it to go out. The first question asked him, or the second or third question asked him, upon examination in chief shows the unwillingness of the witness. He may be honestly upheld in a hazy recollection of what occurred when he first came into office; but it was apparent to my mind, and I was satisfied before I put him on the witness stand, that he would be unwilling. But, for the reason that the entire life and essence of this defense clusters about that man, I had to call him. He was before the committee, testified before the committee; but that was not all, by a great deal. I had to call him. Now, before reading his testimony—I have it all here, so there will be no quibbling between counsel as to what John D. Atkinson said—before reading his testimony I want to recall your minds to what Schively testified to. Hark back, please, to his testimony regarding his consultation with Atkinson and then remember that Atkinson meets that testimony by faulty memory. He does not dispute it, but he simply has forgotten. And I am going to show you that the proposition of charging the flat rate of \$200.00 was discussed with John D. Atkinson and was branded with approval by John D. Atkinson as attorney general of this state; and that when Schively would limit his testimony to a recollection that they talked about the flat rate and that they talked about collecting fees in advance, but that Atkinson only advised them as to advance fees, John Schively is mistaken. It was not only the creature of his and Nichols' mind in working out from this difficulty, but it was with the sanction of the attorney general of this state. And I want to ask you, every member of the Senate that was in the room within hearing, when you come to consider this evidence, won't you kindly attempt to put yourself in the same situation these people were at the time they did these things, before you commence halloaing "Guilty" at anybody. Won't you please put yourself in the position of these people then before you say that anybody was corruptly acting with a guilty, or

dishonest, or any illegal purpose. What was the situation that led up to the interview with Atkinson? I am going to bore you (if you don't understand me); if you are bored by my inability to make myself understood, I am going to shock you into a realization of your duty, to acquit this man, acting upon the presumption that you want to follow the law and want to obey your oath. You, as the legislature of the State of Washington, are responsible for the fixing of the flat rate. That is a pretty serious charge, isn't it? I believe that I can make it good. You created the office of insurance commissioner *ex-officio* in the secretary of state. You ordered him to operate that office. How? By and by I will read the laws and verify these statements. How did you order him to conduct the office of insurance commissioner? When I say "you," I mean the legislature of the State of Washington, impersonally—clear back yonder to 1891, back in 1895, when you started in. I am not speaking of this session of the legislature or the last session of the legislature, but you, the legislature of the State of Washington. What did you do? First, you created the office of state insurance commissioner and defined the duties of that office and of that officer and you made your secretary of state *ex-officio* commissioner. Then, after you had put that burden on him, you said he might have a deputy at \$1,500.00 a year and you would pay the \$1,500.00. Then you told him what he must do, either through himself or through his deputy, and you did not grant him a dollar's compensation for being insurance commissioner. He had the title, but he got nothing for it. Now then, you fixed the fees that insurance companies should pay that came into the state to operate and do business—to insure my property and your property and your neighbor's property. You created the office for the purpose of regulating those insurance companies. You wanted them watched and taken care of, so that if your house should burn down tomorrow it would not turn out that the company was insolvent, or out of the state, or had no assets. You wanted them watched and checked up on. What did you next do? Did you provide for examination of those companies at the expense of the state? Did you make any provision as to how the insurance commissioner was to perform the duties of watching your interests and how he should be paid for it. No, you got cheap. You said, "These things shall be done, Mr. Commissioner, but all the pay you get for it will be gotten from the insurance companies. They will foot the bill. But you can charge them what you please so long as you don't charge them anything but necessary traveling expenses and actual—*a-c-t-u-a-l*—expenses." What is a man's actual expense? Come on. What is a man's actual expenses? You understand, don't you? Now, it seems ridiculous—this law that you first put on your statute books. The *actual* expenses of making the examinations while making the examinations; the *necessary* traveling expenses and the *actual* expenses attendant upon the examination. No limit to it. If your commissioner was dishonest enough to want to spend the spring, or the winter, or the summer in New York, all he had to do was to get on the train



and go back, we will say, to the New York Mutual, and say, "Gentlemen, I have come to examine you. I am stopping over at the Waldorf-Astoria. I have taken a suite of rooms over there at \$20.00 a day. I will examine you as fast as I can." And he could go and come and go and come and go and come, backwards and forwards from the office of the Mutual Life Insurance Company, of New York, an hour or two today, an hour tomorrow, for three months, and have a good time in New York, compute the *actual* expenses he had been put to while making this examination; what he had spent in and about maintaining himself in having a good time while he was examining from day to day; fixing his convenience about it—for the law fixed none for him—presenting his bill to the company—\$1,200.00, \$1,500.00. The company say, "I won't pay it. It is an outrage." He comes back home and cancels its authority to do business in the State of Washington, and he is justified in it by your law. He has obeyed the literal letter of the law, and it is up to that company to pay that bill or stay out of the State of Washington, according to the demands and directions of the legislature of the State of Washington. Now, that is the first law you put upon your statute books. That is the way you safeguarded the insurance companies from any wolfing at the hands of the insurance commissioner, if he wanted to get mean and did not want to be equitable. To get away from the extreme case, you made it possible for him to take a trip East any time he saw fit at the expense of an insurance company, to examine that company, charge all the expenses of the trip for himself or any deputy, and it was a legal, legitimate charge under your law. No protection to the insurance company. You were not so much interested in the poor insurance company then as you are now; and the flat rate proposition that grew out of your law, grew out of the commissioner's equitable administration of that law. Did not cut much ice—those insurance companies—then, with the legislature of the State of Washington, as long as the legislature was putting the expense of the examination of these people upon themselves. Now then, we work along a little further. What is your condition? In 1903 you wanted something else—you of the legislature. I will read all of these laws to you by and by. You said, "We are going to regulate fraternal insurance. We, the legislature, are going to grab these fraternal boys." Now, I am not going to stop to tell you the history of that legislation. I guess we all have one or more policies in the fraternal organizations throughout the country, and we know that they are good policies; that they cost a lot less money than our regular old line insurance does and we notice, as our friends drop off, they pay just as promptly. I am not going to stop to go into the history of the mutual and stock boys; those came to you and told you their woes and wanted you to get these fraternal boys into camp. You reached out and got them and put them under the charge of the insurance commissioner, and you gave your insurance commissioner the authority to put them out of business the same as he could a mutual or a stock company, and you made them put up a

fee to do business in your state, or to maintain a lodge in your state. And what else did you do about them? Now, remember what I am talking to you about; I am speaking of these legislatures gone by. I don't know whether you were all members of fraternal organizations, or had it in for stock companies, or mutual companies, that you had given the commissioner permission to plunder at will, as they do in New York. If you go down stairs into the commissioner's library, you will get the report of the New York investigation of the Mutual Life Insurance Company, of New York, where a bill was made by the commissioner of the State of New York for his examination of \$5,472.00. That is what they paid the commissioner of insurance of the State of New York to examine that one company, for *actual* expenses, they having the *actual* expense law the same as you have in this state. That was the statement of the Mutual Life. Now, notwithstanding that in 1895 you had given the sliding scale to your commissioner to help himself to his *actual* expenses from any company whenever he wanted to make a visit or go to it to make examination, and it did not make any difference how much—the company had to pay or go out of business in the state. Whether it was because you were all fraternity men or not, you swapped horses, you cut out the protection to the insurance department and you put it over onto the fraternal companies, and this is what you say; this is all you say.

This is one of the acts of the legislature—I am reading from a pamphlet—"Fraternal Beneficiary Associations"—Laws of 1903; section 1, page 145. I am reading from section 4, page 358, Laws of 1901 "Any association doing business under this act shall be permitted to do business upon filing annually with the commissioner of insurance of this state the certificates of authorization of the insurance department of the state, province or territory in which it was incorporated or organized: *Provided, however,* In case of failure to file such certificate by any such association, or in case the commissioner of insurance shall deem it necessary"—that is your commissioner, the commissioner of the State of Washington—"he shall have power to examine either personally or by some person designated by him"—anybody he wants to designate; he, the commissioner of insurance (not the deputy insurance commissioner, but the commissioner of insurance) or any one he may appoint—"into the condition, affairs, character, business methods, accounts, books and investments of such association at its home office, which such examination shall be at the expense of the association. The amount thereof shall not exceed \$200.00 in associations with no reserve or emergency fund, and \$400.00 for associations with a reserve or emergency fund."

Now, that is all the law there is in your fraternal insurance laws of 1903, which was passed eight years after the insurance law that you are questioning here of itemized expenses; eight years afterwards you passed that law, leaving the other one just as it was, making no change in it at all. And you said to your insurance commissioner: "Now here, Mr. Commissioner, you take charge of these fraternal

companies and you see that they are kept up to date, and if anything shows here that don't look right, you can examine them—part of your official duties—and protect the policy-holders of the State of Washington in the fraternities that are doing business in this state; but no matter where they are, how much times it takes you, don't charge them but \$200.00. It don't make any difference if it costs you \$500.00 to go up to Montreal, Canada, or down to New Orleans, or Jacksonville, Florida, or New York City, or if, even after you get to the home office, you have to visit half a dozen other of the subordinate lodges; you do the work necessary to see that these people are up to standard; but don't you charge them but \$200.00." Getting pretty cheap, weren't you? Pretty cheap proposition, wasn't it, to say to the commissioner: "You have certain duties to perform; perform them or we will, presumably, impeach you for malfeasance in office, by reason of neglect of official duty, if you don't perform the duty; and if you do perform the duty, no matter if it costs you \$500.00, you pocket the loss. You shall not charge the company but \$200.00. That is all you get." But you said in your ultimatum to him, "We won't limit you. You can collect \$200, and we won't ask you what you do with it. We won't require you to itemize anything, and we won't require any itemized statement from you. We won't require any statement as to what you did in reference to the examination. We will simply say you must only charge \$200, so you take the \$200, whether you do a thousand dollars' worth of work or whether you do ten dollars." This is what your law says: He shall go and examine them whenever he deems it necessary, but he shall not charge but \$200.

Now, what is the situation that confronts your *ex-officio* insurance commissioner? Your insurance commissioner has been down east. He has examined a lot of companies. He has pro rated the expenses and charged it around among them. Instead of sticking one company for the whole cost of going east and the necessary traveling expenses, and then going to the other companies and letting them off with just the actual expenses while there in New York, he prorated around among them. Do you think that was extortion? Do you think it was inequitable? Do you think it was right? What would you have done, Brother Lee, under the law in making that New York visit? Would you have charged the first company you came to your traveling expenses, and the amount of the examination added—traveling expenses and your actual expenses, and collected all before you went to the next company, and then when you came to the next company simply charged them the actual expenses of examining them, because you were already in New York, so that the first fellow got hit for nine-tenths of the whole cost, or would you have prorated it? They prorated it rightfully, according to the theory of the honorable attorney general's office; and according to the board of managers they were guilty of extortion. I don't know whom they extorted—whether it was the fellow who should have footed the bill for traveling expenses, because he was the first one they came to, or whether it was the fellow who

wouldn't have to pay the bill because the other fellow had paid it. It was extortion under the theory of the prosecutor's office. They pro-rated it, and I think rightfully—divided it up among the companies. Now, the experience of these trips was that two hundred dollars, where several companies were examined, was a pro rate of the actual expense, and that \$200.00 each would reasonably cover the trip, ordinarily, to examine a company, where other companies could be taken into consideration on the trip; but that if one company only had to be examined upon such a trip, that \$200 would not cover the bill.

At the same time, how about these fraternal companies? "Well," said they, "we are limited to \$200 there. The state says if it costs any more, we yet have to do the work, and if it costs any more, we have to pay the difference ourselves." Hence I contend that Schively was right; that the flat-rate proposition was not talked over after the return from Atkinson's office, but that it was talked over before, and in Atkinson's office, and that Atkinson admits it—ratified it. There is no question under his testimony that he did not ratify the advance fee, but I say his testimony shows that he ratified the flat rate and that he made the ratification at that time, hazy as his recollection is, and as hard as it is for him to remember, and, reluctantly as he testified, he did testify enough to justify John Schively in the truth of his statements; and that he does not deny those statements of Schively's. Now, let us see. I have here the testimony of Attorney General Atkinson, as reported and extended by the reporters who are reporting this cause. Now, remember Schively says that they explained to Atkinson that it was impossible for any of the office force to go east on examinations, and that they would like to erect some barrier to prevent wildcat companies from coming in; that it had been suggested that they put up a flat rate admission fee to be collected in advance to cover future examinations, and they wanted to know whether that would be a violation of the law or not. Atkinson remembers little or none of that testimony. Schively says that he did; Schively says—and he was grilled unmercifully regarding it on cross-examination—that he got the impression from Atkinson that it would be perfectly legal to charge this fee. At any rate, the construction put by Mr. Nichols and himself upon those laws was that by charging the \$200 fee they would be safe both as to fraternal and as to stock companies, and as to mutuals, and that if there was to be any balance it would be in their favor and not against them. Now, gentlemen, is the desire to keep on the right side of the ledger while obeying the law and carrying out the orders of the law extortion or graft? Does the fact that a part of this body, coming here in extraordinary session to perform a duty, collect ten cents per mile mileage, who this same year in January, 1909, received ten cents a mile mileage, because such law was fixed by the constitution in the days of the state coach and steamboats, and still in the law and constitution, make them guilty of extortion, because they took that ten cents a mile again when they came to this legislature? Senator Piper came here actually for three cents a mile, while he is col-

lecting ten cents a mile and five months afterwards. Coming back here after having had mileage to come in January, and having seven cents per mile of that mileage left. Is he extorting or grafting the State of Washington in taking ten cents again for the extra session? No; because the law gives it to him. Why, no; it is neither morally or legally wrong. It is a drain on the poor taxpayer that you talk so much about. It costs him twenty cents a mile to bring you here and send you home again when it only costs you six cents, but he gave it to you and it is yours legally and it is yours morally, and it is yours rightfully, and you cannot be impeached for taking it, although you are paid fourteen cents a mile from wherever you come that is not necessary. It was not a necessary expenditure. You had your per diem besides, but it is still the law, and you are entitled to it and nobody questioning it. It is only being used as an example for the purpose of construing conditions of your laws that I told you about, confronting your insurance commissioner, when you told him he should examine fraternal for \$200 and no more; only take *actual* expenses from stock and mutuals—examining the situation you put him up against. You didn't say to him, "In case you legitimately have to spend more money, we will reimburse you from the state treasury." No, no, nit. Nothing of that kind. "There is the law, Mr. Commissioner; work out your salvation. If you lose money, we can't help it. We are not going to guarantee you anything. You do this work or you give up the job, and you take that pay or you give up the job. Your trouble don't bother us a bit. Run along." That was the situation in this insurance office on that day and that hour when the attorney general was called in. Now, there is something peculiar in all of this, before we come to Mr. Atkinson's testimony—something a little peculiar. This law of 1905 fixes the charges to be made against mutual and stock companies, which is section 8 of the Laws of 1895, saying, "That the expenses of every examination or other investigation of the affairs of any organization, pursuant to the authority conferred by the provisions of this act, shall be borne and paid by the corporation so examined. No charge shall be made for any examination of insurance organizations except for necessary traveling and other actual expenses incurred. All charges for making examinations shall be presented in detail and shall be paid by the organization examined. Should payment be refused, the bill shall be approved by the commissioner, audited by the state auditor and paid on his warrant drawn in the usual manner on the state treasurer to the person making the examination," etc.

Now, this is a little peculiar. You lawyers here in the Senate agree with me instantly that under proper statutory construction this language is directory. It is not mandatory. Furthermore, nowhere in the act is there any attempt to make any specific penalty or penalize the violation of it. Now, the peculiarity about it that I am going to direct your attention to occurs in examining this testimony of Attorney General Atkinson. Notwithstanding his bad memory, and all that, he discovered these features of the law and discussed them with the in-

insurance commissioner and tacitly told him that he would not be violating any law if he put the flat rate on it. If your attorney general told your commissioner that he acted correctly, are you going to punish the commissioner? Are you going to oust a man from office, whether he was officer or deputy? Are you going to taint him with a sentence that destroys his citizenship and marks him an outcast? Are you going to visit the full punishment of impeachment upon a man who has acted upon the knowledge—the supposed legal knowledge, of your attorney general—an officer that your law says is provided to guide and direct and advise him? Let us see if he did.

BY THE PRESIDENT: The court will take a recess for fifteen minutes.

Upon reconvening, the following proceedings were had:

BY MR. ISRAEL: If the court please, and gentlemen of this court, when the gavel fell for a (to me) very agreeable recess, I had just reached that point where I was about to take up the testimony of Attorney General Atkinson; all that I had said prior to then being that which I wished to say preparatory to my attempt to make good my assertion that at the time these officers visited the attorney general they were in a quandary, not of their own making, but as the result of the legislation that had been placed upon the statute books by the past legislatures in regard to the duties of this office. Now, I desire to approach this testimony with the mind of every senator centered thereon, if I can get that concentration and attention, that would be so concentrated if he was for the first time hearing these charges as they have been made from the witness stand—utterly divorced from the condition of mind that existed in those same senators when they came here and were sworn to try this cause. I take it now that it is useless to approach this testimony without we can put that all behind. Let us say now that John Schively before he was impeached was tried at the bar of public opinion, as manufactured by certain newspapers, condemned by those newspapers, adjudged guilty, and the question, so far as they were concerned, closed. Let us put it behind us, as you agreed to do with that oath, when you undertook this trial. Let us forget it and stick to this testimony as we have agreed to do. Let us carry in mind the conditions confronting the secretary of state and his deputy when they sought this advice, and let us carry in mind what Schively has testified was the object to be obtained and the relief to be sought and the policy to be worked out when they went to the attorney general. When I put this witness on the stand I put him there with the full realization he was not a willing witness—that he would much prefer that he be excused, that all be undone (if it could be) that he had done—but I put him there with the idea that if he were forced to testify that he would tell the truth, but also with the notion that he was not going to tell any more than he could remember, so I put the questions to him a little out of the ordinary. He is a lawyer. After identifying him and his profession and his residence and fixing the fact that from 1905 to 1908 inclusive he had been attorney general of

this state, this was the question: "During that period do you remember the circumstance of being asked as attorney general by Commissioner Nichols, the then secretary of state, and this respondent, John Schively, as to their rights to collect at the time of application of foreign insurance companies to enter the state a fee for examination, a fee to be paid in advance?" Is the question clear? Is it intelligent? Does it apprise the witness of what he is called upon to answer, either directly or indirectly? Does it apprise the witness that he must say (if he has any conscious recollection) whether he did or did not give such advice? The answer was: "Yes, I remember a consultation of the matter."

"Q. In that consultation and during the facts that were stated to you by reason of those matters, did you advise them that they could make such advance collections without violating the law?" What advance collections—deposits requiring with applications of foreign insurance companies to enter the state and examinations to be paid for in advance. But to consider the question—again: "In that consultation and during the facts that were stated to you by reason of these matters, did you advise them that they could make such advance collections without violating the law." Answer: "Yes, sir; that was the resulting inference of the consultation." First attempting to deny, but the answer, being made—reluctantly admitted, but nevertheless admitting that they had a right, from what he said, to infer that they could make that collection in advance. The next question: "At the time you had under consideration the insurance law of the state that governed the examination of companies, did you not, General?" Is that plain? Did you have under consideration when you were giving this advice, the insurance laws of this state regarding the examination of companies? Answer: "Yes, sir." Now, this particular question, asked for a purpose: "You gave in arriving at the opinion that such collections could be made—you gave to the law the broadest interpretation it would permit?"—one lawyer talking to another on the construction of the statutes. Answer: "Yes, sir, I did." Now comes the question that shows to my mind, and it ought to, in my opinion, show to the mind of every man who is inclined to be fair in this matter and give justice where it is due, an admission of Mr. Atkinson that he not only advised the collection of the fee in advance for companies coming in as being perfectly legal, but that he ratified the question running through the minds of Sam Nichols and Schively as to whether they could put the flat rate basis on everybody—fraternal, stock or mutual—notwithstanding the language in the stock and mutual paragraph of the necessary traveling and actual expenses. Believing in my heart that John Schively told me the truth when he said that it was under the advice of Atkinson, I purposely framed this question to the witness, that I knew was testifying with reluctance and would not testify if he could help himself. I asked him this question: "You regarded the clause in that law as to itemized statements as being directory rather than mandatory, did you not." Answer: "Yes, sir." Now, there is nothing in that law referring to advance fees. He did not need the law to

determine the right to collect advance fees at the time of the admission and make the examination afterwards. The common law forbidding the collection of fees in advance for services to be performed did not obtain in the State of Washington. Everybody, lawyers and every one, know that Judge Presby ruled it. As I said, I am not going to dignify the argument to the contrary by producing any books. Atkinson knew it. Atkinson did not have to look at the insurance law to settle that question; but if there was a discussion of the flat rate as against the directions of the statute of necessary and *actual* expenses, it then became necessary to construe the law, as to whether it was mandatory or directory. This unwilling witness tells me that he did construe that law. Listen again: "At the time you had under consideration the insurance laws of the state that governed insurance companies, did you not, General?" Answer: "Yes, sir." "You gave, in arriving at the opinion that such collections could be made—you gave the law the broadest interpretation it would permit?" Answer: "Yes, sir, I did." "You regarded the clause in that law as to itemized statements as being directory rather than mandatory, did you not?" Answer: "Yes, sir." Now then, I am ready to ask the clinching question that, if he answers in the affirmative, puts him on record as being—as having advised that a flat rate could be charged without violating any law—no matter how faulty his recollection, no matter how hard he wants to get away from testifying. Question: "You also was doing the law"—the stenographer has it "doing"; I didn't use that word—"and was considering it; were you then of the opinion that the matter of the detailed statement was a matter rather between the insurance commissioner and the insurance company, rather than the State of Washington, which had nothing to do with it? That is true, is it not?" Answer: "Yes, sir; I believe it would be." Did John D. Atkinson advise Secretary Nichols and his deputy that they could put on the flat rate in the face of the itemized statement because the itemized statement law was a more directory law and not mandatory, without penal character, with which the state had nothing to do, and was a matter between the insurance companies and the commissioner only? Did he so advise them? If he did not, what did he mean by this last answer. He is an intelligent man. He has held a high office in this state. He has directed your attorney general's office for four years. No one has heard of opinions going out of that office not being up to the standard during those four years. He is above the average intelligence—trained in the law. What did John Atkinson have in mind when he made these reluctant answers? What was he construing the itemized feature of the law for? It was not necessary in determining the question of advance fees for examinations. Why was he determining it was directory, Mr. Bryan, rather than mandatory—a matter that was between the insurance company and the insurance commissioner, and not the public, if he was not construing the flat rate? Now, we are trying this case (you and I, at least) as if we were in the superior or supreme courts, under our oaths as lawyers. Extortion is to be committed by a corrupt act, and if the act is under



the advice of the legal adviser of the state, is it yet a crime, if the legal adviser has advised the act, or is John Atkinson a pitiable fool? What was John Atkinson talking about mandatory and directory laws as to an itemized statement for if he was not advising as to the legality of the flat rate? I know he forgets the conversation. I know he didn't recall what Schively recalls occurred there. I know he testified that he was jerked before the committee at the time this thing was hissing and seething hot in these newspapers. And after the headlines had been run in the newspapers heralding that Schively had accused him of being the author of the flat rate, and, without Schively being there or his attorney being there, he was examined before this committee and his testimony there sprung on him by Lee. I jerked him on the stand here to testify, when they didn't and I didn't know what was coming; but I put him there. I made up my mind that I would go down and get these facts if it was in the—if it was a human possibility—before they could be headed off. There you are. "You also were of the opinion that the matter of the detailed statement was a matter rather between the insurance commissioner and the insurance company than the State of Washington, which had nothing to do with it? That is true, is it not?" Answer: "Yes, sir; I believed it would be." Then he was cross-examined by Mr. Lee. He said, to the best of my recollection, it occurred in January, 1907. He had said that before. Schively says positively it occurred in 1905, when he was attorney general. We can here, without even taking the rule of reasonable doubt for the benefit of the defendant, say as against the positive statement of 1905 and the qualified recollection of 1907, that under the whole record and the date when they commenced charging the flat rate, and advance fee, that was in 1905, without doing any violence to the evidence. Now, Mr. Lee adroitly faced him with what they had drawn out of him before the committee when they had sent for him after the newspapers had blazoned him as a guilty man. Schively swears before the committee that John Atkinson was the man that had advised the flat rate. John Atkinson rushes to Olympia and gets on the stand and testifies. Lee has the testimony and he flashes it on him, and he has to admit that he said all of these things that Mr. Lee will read to you when he comes to close the case, and which I shall briefly read to you in a moment, but after he had gotten all through, Lee makes him say, "I don't know why John did this; if I said advice, I will say here I regarded it then as more or less of an informal talk, because when we gave advice we gave it in writing." John! John! John! You were the attorney general, and you were asked as the attorney general, and you replied as attorney general, and it is idle and futile to say now that if your advice was wrong, it wasn't an opinion because it wasn't in writing. We won't even attempt here to say that you meant that at all, that you meant to say it was not responsive to what you told Mr. Schively because you didn't put it in writing; we won't allow you to set any such precedents

for your successor or his assistants; not that they ever would claim it; for my young friend here, if he were ever called upon the witness stand to testify, to put a construction on the law, either in the gutter or on the street, or sitting in a chair in the elevator, he would not go upon the witness stand and say that it was not his opinion, it was not advice, because he did not put it in writing. No, he will never do that. We will be more charitable to John than to say that he meant that, even under the stress of his cross-examination. A lawyer's word to his client, be that client in the humble walks of life and the lawyer promulgating the law for his bread and butter, or be the client one of the high officers of a great state and the lawyer its attorney general, when he speaks the word in answer to the question, he gives the advice—we all know that. So after this, after Mr. Lee directed attention to all of this testimony in the record, I brought him back. He had been hazy before, didn't want to contradict, so I said to him: "Although your mind is hazy regarding this matter, your recollection is, and your intention was, they would gather from that conversation that they could make an examination fee charge in advance?" Now, he had been wandering all around Robin Hood's barn to honestly and truthfully avoid the effect of this testimony before this committee. They had all had a shot at him, yet he says, "I presume in all fairness that would be the inference." Must come back to it—too honest and too truthful to lie—so he says, "I presume in all fairness that would be the inference that they would draw from what I told them." As a lawyer, he knows what he told them, though hazy now. What inference? The right to charge a flat fee.

Now then, I sat there, in Mr. Williams' seat, at that time listening to Attorney General Atkinson. My case, my defense, my justification, my sense of the righteousness of John Schively's position, my sense of the outrage of these articles of impeachment was predicated upon my knowledge of what John Atkinson should testify to; and I sat there, probably the most interested spectator in this room, knowing what he had testified to before the committee, and knowing the truth; wondering where he would go to now; and when he gave me that answer, "Yes, in all fairness"—that he presumed, and so forth—I took courage to push another step further in the establishment of the truth. Question: "And your recollection does serve you, you said what you did before the committee, and it serves you now that there was some discussion about this law being directory and not being mandatory in its scope?" Answer: "Yes." So then, Schively was right, and Schively told the truth in the beginning when he said that they advised with John D. Atkinson as to the legality of a flat charge in the face of the itemized fee bill. Will you get away from it and be fair; isn't it an irresistible truth, that answer? And I am emboldened to push on as to this cross-examination: "And if your recollection does serve you at that time you made a broad construction of this act that was under consideration?" Answer: "I have so stated" Question: "And if your recollection does serve you in making the broad interpretation, you made it

with the proposition that there was no way in this matter, no other way in this matter, of construing it other than a matter between the insurance company and the insurance office, rather than the insurance office and the public; that is true, is it not?" Answer: "Certainly." That is his answer.

Now then, be fair, be fair; honest to yourself. Be honest to John Schively and to yourselves in his place. Consider the situation when Nichols and he were seeking this advice; what would you have done under similar circumstances? Be fair. Would you have taken your mileage that you didn't need to pay your actual expenses? Would you have taken what you considered the law gave you under the advice of the attorney general? Be fair. And again be fair when it comes to vote on his guilt or innocence. Consider the whole case—not its political complexion, or your hatred of the man. Be fair and follow the law is all I have asked of you; just the law. What would you have done if confronted with this situation as to protecting yourself in the paying of the expense incident to the duties of your office? Whether it was drawing ten cents a mile and ride on a three-cent-a-mile rate, or whether it was fixing a rate in the face of a directory statute, that did not interfere with public interests, and for moneys that came from those who could afford to pay it and were willing to pay it. What would you have done under the circumstances? Be fair. When you went out of Attorney General Atkinson's office, what would you have resolved to do regarding the future examination of companies? So I say that in the beginning the condition of the law of your own creation, with which you surrounded your officer, the secretary of state, coupled with his desire, which is the desire of every one, not to perform a duty, public or private, at a personal loss, if it could be avoided, verified by the advice of one to whom he, under the law, and to whom all the state officers looked to give the law, resulted in the doing of the things which you know now, as the highest court that can be created in the commonwealth, sitting here are asked to condemn as a wrong, punishable not only with removal from office, but with the taking away of the citizenship of the man who did it. Is it fair? Will you look at this matter as the law pictures it to you? Or will you stick with the "P.-I." and the Tacoma "Ledger?" I realize that it is a hard jolt to any man's egotism to suddenly wake up to the fact that he has been bamboozled and imposed on, no matter who did the bamboozling and the imposing.

I have no doubt that the committee that conducted this examination were honest in their every intent and purpose, were honest in their labor, were honest in their belief that they were reporting an offense when they reported the facts. I don't believe that animus or prejudice entered into their discussion, although I know there were bitter influences at work. I know there was about the doors of that committee room an influence calculated to warp it in carrying out the policies and making to the destruction of John Schively. There came a day, though, when there was evidenced to me, through the bald

statements of those same newspapers, falsely or correctly giving an interview, that John Schively was already convicted before that committee, though the hearing was not yet completed. Up until that time John Schively had stood before that committee, telling nothing but the truth, telling that committee what he has told here, freely admitting the things that he was charged with, intending when it was all over to be further heard by his counsel, as to the legality or illegality of his acts when measured by the law; but the opportunity was never afforded. The day and the hour came when John Schively had to stand up in that committee and refuse to furnish further information, because he did not conceive that he was being fairly treated; and then you know the rest. They resigned John Schively. They resigned him every day, and up to the last hour of the meeting of this extraordinary session of the legislature, in these newspapers. John Schively stood then at my side and has stood there since, strong in the knowledge that if his right—the facts, the law, as well as the true facts—could be gotten before the minds of a body that were unbiased, that if that could be done, he would be acquitted.

Now, after all the testimony—you are patiently abiding with me, that I may show you the law and the conditions; and were I to stop here and now with these simple statements and pictures—the condition arising from that visit to the attorney general's office—I would have said enough to have withstood every onslaught of the eloquence or sophistry, and would have acquitted this man.

But John Schively is further justified. There is yet other justifications measured by the law. Why, it was said by the manager opening this case, and said by some of these newspapers, that Schively is seeking to hide behind poor old Sam Nichols and lay all of the blame upon Sam Nichols. That is a damnable lie on the part of the newspapers—an egregious error on the part of counsel, undoubtedly led to make the statement by that same damnable newspaper article. John Schively has never attempted to hide behind Sam Nichols. John Schively will never deny what he did or what his superior officer did. John Schively justified Sam Nichols in these charges just as much as he justified himself, and from the same standpoint, so far as we have gone. It is a lie and the evidence shows it is a lie; and it is told for the reason that upon the floor of this Senate there may be some men who may be influenced by their friendship to Sam Nichols to do this man injury. That is the nastiness of it all. It isn't necessary for me to say what the influences were that drove Sam Nichols to his resignation. You all know. He didn't stand the onslaught of your committee that Schively did. I know not who advised him as to his course, but he was badly advised, and it left him in a position that there was nothing for him to do but resign. But Schively has always stated from the beginning that which worried my young friend and his associates so much, and which I am going to reach now: the fact that Schively had a double defense; that even if he could not be absolutely justified under the law for what he did under the advice

of the attorney general's office, even if the things that he did were criminal and wrong, even if it were said to be extortion, that no punishment could be meted out to him by the Senate sitting as a court of impeachment; that he was not at the time an officer. [*To Mr. Lee.*] Please make a memoranda of that when you come to close this case; review the authorities that I am going to give this Senate. Your manager has stated in his opening—and I am going to presume now that there is going to be no more judicial somersaulting—your manager has stated in the opening that John Schively was an officer; that the law is that a public officer may be removed for offenses committed while in his office, or for offenses committed during the prior term of office. Your manager has then admitted for you that you do not charge a single act or misdemeanor against John Schively in the office of state insurance commissioner, as organized on the 13th of January, 1909, but that by virtue of his having been an officer in the former administration of the office of insurance commissioner, that he can be tried for removal, and be removed from this, his present office, and first election thereto, by reason of his offense as an officer in the other term. I have not conceded it—not conceded that that was the law—that is, that a man can be removed from office for offenses committed at a past term of office; but for the purposes of this argument, we can concede it; for that purpose alone, for the purpose of trying this impeachment.

Now, what constitutes an officer? Because the whole fabrication of the impeachment of Schively, irrespective of these questions that we put behind us—that he was right in what he did, no matter how erroneous it was in fact, because he did it under the advice of the law adviser of the state; without malice, without unlawful intent, without design to violate the law, without corruption; that extortion must be corruptly done, is defined by this point; that irrespective of that justifying argument which acquits John Schively, if he did not have that defense to fall back on, if he wasn't justified under the law in his acts, by that defense; that under the circumstances, so far as this court of impeachment is concerned, there is yet another fact that justified him in acquittal at the hands of this court, although it might not justify him, would not justify, if he was proven guilty in a criminal law court. Now, mind you, do not get the ideas crossed for one moment that Schively has done anything and is punishable either in a criminal court or here under the facts and the law as we now find them to exist. But supposing that he had acted corruptly without any advice from the legal department, for the purpose of grafting somebody, and that had been proven, still he could not be impeached in this court if those things happened during the administration of Sam Nichols as insurance commissioner, because at that time he was not an officer; and because, under your own theory, this Senate cannot impeach anybody except to remove them from office by reason of high crimes, misdemeanors or malfeasance committed in that office. Your manager in opening has taken that position which is

correct. In his last position he is incorrect, but I adopt the incorrect position, and take it for the purpose of argument as all true, and proceed to its analysis; and this brings us to the failure of the proof in this case. These articles of impeachment charge John Schively, as an officer, with doing these things. They had to charge him as an officer or they couldn't charge him at all. Now, it was necessary that they establish that fact before they could convict Schively in a court of impeachment—that he was an officer at the time of the commission of the offense that they allege. They satisfied themselves that they had done that by reading the section creating the office of deputy insurance commissioner. Mr. Lee read it to you. I think Mr. Edge read it to you. They looked no further.

Now, gentlemen, under the law as it is, under the state of facts that should appear in this record, if any attempt had been made to prove John Schively was an officer while holding the position of deputy insurance commissioner in the office of Sam Nichols—and I want to say here now, right at the threshold of this argument, that I will stop the argument and permit the honorable board of managers and their attorneys to put on whatever evidence then can find to prove, which they have not yet done, to negative the statement that I now make: If it is absolutely true, it was a part of their case—proof to constitute Schively an officer under Sam Nichols. They did not make it; they may make it now, if they desire and can make it; and I will stop until they do make it, after the assertion I make, or they forever hold their peace. John Schively, in the office of Sam Nichols, to fulfill the requirements of the law providing that that office should maintain a deputy insurance commissioner, was not under oath, gave no bond, and was removable at the will and pleasure of Samuel Nichols. Now then, gentlemen, if that is untrue—and it is up to you to have proven the facts to make an officer of him beyond the law you read—I will stop now and you may make the proof that my statement is wrong. All of the books—I will only stop to read the text-books cited by Mr. Lee in the early argument of this case and a couple of authorities, although there are a hundred within the library—all of the books lay down this position, that to constitute a deputy to be a public officer, he must be under oath at least, if not under bond, and not removable at the will of the employer. In all other cases the deputy is a mere employee. I hold in my hand "Meacham on Public Officers," a recognized authority upon the subject, and I am reading from the preface, that which is elementary to all lawyers, in the first chapter and on the 17th page, I think. "*Deputies*" (page 60) "Whether deputies appointed by public officers are to be regarded as public officers themselves depends upon the circumstances and method of their appointment. Where such appointment is provided by law, where it is required by law, or when it is a law, which fixes the powers and duties of such deputies and"—now mark the conjunctive conjunction "and"—"and where such deputies are required to take the oath of office and to give bonds for the performance of their duties, these deputies are usually

regarded as public officers, but where the deputy is appointed merely at the will and pleasure of his principle to serve some purpose of the latter, he is not a public officer, but a mere servant or agent." Gentlemen, I asserted it would be necessary for you to have proof in the first instance—to have proof to establish John Schively as a public officer by virtue of his deputyship, that he was under oath and under bond and not removable at the will of his employer. You did not prove it. I assert now that he never was under bond, never took an oath and the law left him removable at pleasure, and I invite you to prove to the contrary now, or forever abandon your claim that he is a public officer.

BY THE PRESIDENT: Mr. Israel, we can give you a recess for a few minutes, if you desire it.

BY MR. ISRAEL: Thank you, your honor. I certainly will take it, and I shall be much relieved.

BY THE PRESIDENT: We will have a recess of ten minutes.

[*Recess.*]

BY THE PRESIDENT: You may proceed, Mr. Israel.

BY MR. ISRAEL: If the court please and gentlemen of the court, pursuing this question of officer or employee, guided by the statement of Mr. Meacham as to what makes the distinction; measuring it by the rule that Meacham lays down, which is unquestionably the law and with which I don't think counsel will quarrel, the definition as to who is a public officer, when a deputy and when not, I invite your attention to all that you have placed upon the statute books, or all that the legislature of this state has placed upon the statute books in regard to that matter, to afford you any light it may as to where you would classify this officer, measuring him by the rule laid down by Meacham. The first enactment upon the subject is the creation of the office of insurance commissioner. Now, don't for a moment confound the present office with who was the insurance commissioner prior to your making a state office of it and electing a public officer to fill it, independent of the secretary of state. The secretary of state was the insurance commissioner. The secretary of state was created *ex-officio* such officer by virtue of his being secretary of state. Provision was made for what was supposed then to be an adequate office force to administer the office. No salary was attached to the office—none whatever. [*Reading*] "Section 5615. *The Secretary of State*. The secretary of this state shall be *ex-officio* insurance commissioner of this state, and receive for his services the compensations hereinafter provided for. All necessary forms, circulars and blanks, together with such pamphlet copies of the insurance laws as may be required for distribution to any person at any time by the provisions of this act, shall be furnished at the expense of the state." That was the section that created the office of insurance commissioner as it existed from then until it was passed into an independent state office by the legislative enactment of 1907. No compensation was provided for by the state to him as insurance commissioner, or aside from his salary as

secretary of state. Notwithstanding the provision that the secretary of this state shall be *ex-officio* insurance commissioner of this state, and shall receive for his services a compensation hereinafter provided. But under the head of "Insurance" the legislature further provided—having made him insurance commissioner, and providing absolutely no remuneration for the office, contemplating that he should act through a deputy of his own choosing, and the state should pay that deputy—the section that is now 5648, Pierce's Code, was passed.

[Reading.] "The commissioner"—the commissioner of insurance, it means—"The commissioner shall appoint a deputy, whose salary is hereby fixed at \$1,500 per annum, and in the absence of the commissioner or his inability from any cause to exercise the powers and discharge the duties of his office, the powers and duties of the office shall devolve upon the deputy." In other words, the legislature said to the secretary of state, "We will increase your burdens of office, aside from the duties of secretary, for which we have provided a salary. We will make you no extra compensation while increasing your duties, but we will allow you to have a representative in the person of any one whom you desire to employ to aid you in the performance of these duties when from any cause you cannot perform them yourself." In other words, "Because your time is so fully taken as secretary of the state, for which we are paying you for so much per month, or so much per day, and in so paying have the right to call upon all of your services, we will give you \$1,500 per annum to pay such deputy as you may appoint in your office; but all of the acts that we have provided to be done by the insurance commissioner will yet remain your duties as insurance commissioner. We will make no provision in the law for the deputy doing anything except performing the duties of your office during your absence or inability to act. We will make no requirements of your deputy. We will not dignify him to the position of an officer. We will not require any oath of office from him. We will not require any bond from him. He can come and go at your pleasure, as to his personality. He may be anybody that you desire. You shall be insurance commissioner. You can appoint to the office John Jones this month on a salary of \$1,500 a year, and next month you may have there Tom Brown, or whom you please. All we will do it to furnish you \$1,500 a year to pay to him as salary. It will not be paid to any one else but he whom you have nominated." That is the condition and remained the condition of your insurance law and your insurance commissioner from the time of the enactment of the law of 1901 up till he was superseded—the *ex-officio* commissioner—by the creation of such officer and that title. Nothing else. No dignifying of the deputy into an officer at all. No requiring any of the essentials that would go to make a public officer, as I read them to you from Meacham. No bond. No oath and no prohibiting the deputy from being removed at the will of the commissioner. Now, my whole superstructure is builded up upon the distinction between public



officer and deputy or mere employee—all is built upon this assertion, that the law of the State of Washington did not require, and as a matter of fact there never was required, either oath of office or bond from this commissioner, this deputy, beyond a personal bond from him to Sam Nichols as Sam H. Nichols' employee, as your committee found it in the office of the *ex-officio* insurance commissioner. We do not deny it is a fact that Schively was always under bonds to Sam Nichols through a surety company, but not to the State of Washington. The State of Washington did not recognize him as an officer or require him to be under bond; neither did it require him to sign an oath of office. Neither did it require Sam Nichols to keep him employed any certain length of time. That deputy could only continue so long as Sam Nichols wished him to. None of the elements of a public officer; and if these assertions be untrue, the superstructure falls. We will charge that they are true and that the learned gentleman on the other side cannot point the contrary to you; and I now state, as before, that he has my permission to open his case and prove that there was a bond or oath of office, if such was the fact. Now then, measure up by the rule that I read you from Meacham—and I don't think it is a repetition to be apologized for if we read it again:

Whether deputies as appointed by public officers are to be regarded as public officers themselves depends upon the circumstances and methods of their appointment. Where such appointment is provided for by law, where it is required by law, and where such deputies are required to take the oath of office and give bond for the performance of their duties, the deputies are usually regarded as public officers; but where the deputy is appointed merely at the will and pleasure of his principal to serve some purpose of the latter, he is not a public officer, but a mere servant or agent.

Now, I have brought to you, from the library, two cases, and they are all that I will impose upon you. To illustrate to you what position has been taken in the courts on this rule, I invite your attention first to a case in the supreme court of Colorado, reported in the 17th Pacific Reporter, page 505. Here was the case of a clerk of the court appointing a woman as a deputy clerk of the court; the clerk being an elective officer of the state, and the constitution requires that the court should have a clerk and seal for a court of record; and the office elective, when a woman was not allowed to hold office in the State of Colorado. I brought this case to you to illustrate the working out of the rule in these discussions. An appeal came up from a justice court, and in the absence of the clerk was filed by the deputy. The law required that the appeal should be filed by the clerk. The proposition was that the deputy clerk must be qualified as an officer and be an officer of the court, because the court was required to have such officer, and though it was the act of his deputy, it was nevertheless the act of an officer of the court, and a woman could not occupy such a position. "May a woman lawfully hold the position of a deputy clerk of a county court, and discharge the duties thereof?" The

supreme court of Colorado asked that question in writing the opinion. Then that court answers:

By the act of January 13th, 1877, it is provided that every clerk of a court of record, with the approval of the judge thereof, may appoint one or more persons to act as deputy or deputies, who may perform the duties of such office in the name of their or his principal, and that such deputy shall hold such office at the pleasure of his principal.

Here, by the act of 1895 the legislature provided that the *ex-officio* insurance commissioner should appoint a deputy. Here the statute is silent, and the right is given by this silence to the commissioner to change this officer as often as he pleases. This is all the legislation we have upon this subject, except the act of 1887, which does not materially change the same. The Colorado court continues:

There is nothing in these provisions rendering a woman incompetent to hold and discharge the duties of such position. By section 6 of article 7 of our constitution it is provided that "No person except a qualified elector shall be elected or appointed to any civil or military office in this state." A like constitutional provision has been construed by the supreme court of Ohio, and the word "office" as used therein held not to include such deputy clerkship. (*Warwick vs. State*, 25 Ohio, 24). We do not think it was the intention of our constitution to declare such avenues of employment closed to women, and until some clear expression to that effect has been made by the constitutional or legislative provision, the court should not declare against the employment of women in such positions. The judgment should be affirmed.

Now, turning to the Ohio state case found in the 25th Ohio, page 24, we discover why the Colorado court passed on this question with such certainty after citing that case. This was another case of a woman deputy. Says the Ohio court:

The question whether Ellen Stranahan was a legal deputy clerk depends on the construction to be given to section 4 of article 15 of the state constitution. This section declares that no person shall be elected or appointed to any office in this state unless he possesses the qualifications of an elector. Ellen Stranahan had not the qualifications of an elector, and if this was an office, within the meaning of that section of the constitution, then she was not legally appointed. No one will contend that the word "office" in this section of the constitution is to have its broadest meaning, so as to make it applicable to everything known by that designation. Surely it does not apply to officers of private corporations, or of churches or of all the minor and subordinate officers of colleges, academies and schools, such as professors, teachers, janitors and the like. Nor can it be applicable to all subordinate officers in the military or legislative departments, to the secretary of the governor, or numerous other subordinate officers. The provision is disabling and should therefore receive a restricted rather than an enlarged interpretation. On this principle, it seems to us the provision can be held here to apply to the principal officer alone; the probate judge and not to his deputy. At common law the officer and his deputy fill but a single office. (*Anderson's Lessee vs. Brown*, 9th Ohio 151). The acts of the deputy are in law the acts of the principal, and he is responsible for them. The deputy is appointed by the principal, can be appointed by none else, and is removable at his pleasure. The appointment of deputy clerk of the probate court need not be approved by any other person or court. He is entitled to no salary or compensation, except what may be allowed him by his principal; and he can lawfully do no

act against the will of his principal. Such an office does not seem to come within the definition laid down by the judge delivering the opinion of the court in this case of *The State vs. Kennon*, 7 Ohio State 546, namely, "An employment on behalf of the government, in a station of public trust, not merely transient, occasional or incidental." Without undertaking to decide upon the correctness or incorrectness of this definition, as applicable to the present case, we all unite in the opinion that the office in question here is not within the purview of the constitutional prohibition named.

And all the members of the court joined in the opinion.

Now then, so much for the law as to how Mr. Schively was acting at the time of these alleged offenses. So, gentlemen, before passing to the review of the many assertions of counsel who opened this case, and to the examination of the applicability of the law that he cited to the facts of this case, and the discussion of these articles of impeachment, excepting the perjury charge, it seems to me that we are confronted at this time, irrespective of the further discussion, with this fact—or with the facts, more properly—that with the exception of that perjury charge, everything here exhibited against this man as a malfeasance in office, waiving the question of his justification as a defense for the time being—that everything exhibited in the articles with the exception of that perjury charge, in the light of the law and the light of the evidence, absolutely fails. Instead of justifying a verdict of guilty on a single one of them, in a court of impeachment as a malfeasance, though waiving the defense that they were done under a departmental rule, promulgated for the purpose of protecting the department and under the advice and consent of the legal adviser of the state officers at that time, that it was right and legal to require companies coming into the state to not only pay an admission the law required, to go into the coffers of the state, but to put up sufficient money to insure the cost of said examination when it was made, that such requirement was absolutely proper, and the advice of the attorney general was absolutely correct. And every lawyer in the body, irrespective of his feelings toward John Schively, must admit that fact. Waiving the defense that the question of the advisability, or legality, rather, of the flat rate charged as to all insurance companies, irrespective of the directions of the statute as to the mutuals and stocks, was impressed with correctness by Attorney General Atkinson, as revealed by his own testimony, much as he may regret that advice as ill advised; waiving the defense that it was honestly acted upon, which is undisputed; that the intention of building up a barrier against wildcat companies was taken into consideration in the imposing of this collection fee in advance, which to my mind is demonstrated by this testimony of John D. Atkinson and proved by him, notwithstanding his hazy recollection, by his recollection of the facts that he does admit recollecting; waiving the fact that if John Schively is to be impeached and is to be found guilty under these articles of impeachment, it must be by breaking down and trampling over all rights, justice and equity due him, in doing what he and Sam did

under the instructions and under the circumstances, and in the face of that advice, it still remains that if there is any efficacy in the law, if the law is to receive any consideration here at all, in measuring up the verdict of you honorable gentlemen, that then you are trying a man for malfeasance in office when he was not an officer; that, in face of the law, you, the representatives of the people, say "We can try this man for these acts, although he was not an officer at the time of their commission, and impeach him and find him guilty and put him out of the office he is now in, notwithstanding the inhibition of the constitution that we can only remove for high crimes, misdemeanors or malfeasance in office."

To return a verdict of guilty on a single one of these counts is to brush aside those legal principles. If it is to be done, this last hour with you is absolutely futile on my part; but I don't believe it. I believe that all—or I believe that a majority of you gentlemen—for the first time considering these questions that have never been presented to you before, that have been consistently buried away from you while this howl of mad dog went up and down the land, will pause now to give the consideration to them that they are entitled to, and considering them will say, "I will taint no man under such conditions. I will vote no man guilty under articles of impeachment where the law does not justify it. The methods I will allow to be scourged if he be guilty, but I will not scourge him where the law does not permit me to adjudge him guilty." That seems to me, gentlemen, to be the situation that is confronting us this evening, or this afternoon, and to dispose of the proposition without going into the details of any of these acts.

Why the statement of counsel opening this case that Schively and Nichols received thousands and thousands of dollars for these examination fees? The evidence does not justify it; your committee experience does not justify it. When you had John Schively in the air, Mr. Lee, it was no particular credit to you, although I concede your consummate ability as cross-examiner, and the promise you give in its improvement—the poorest witness I ever saw; that the merest tyro could put into the air—you made him say something about "over or under ten thousand dollars"; but when he got quitted down to a realization of what you were trying to talk about he told you that it could not have exceeded thirty or forty companies; and told why more companies out of this large number that came into the state were excused the payment of this examination fee than were required to pay it; and the many reasons why they forewent that payment. To my mind, that was the strongest proof that this was not done for the purpose of graft. Had it been for the purpose of graft, charge would have been made against every company.

And, Mr. Lee, while you were examining Mr. Schively you had in your mind what the members of your committee knew and you know now; that which you did not reveal to us in your testimony; that, by

your executive, or at least out of your executive's office, to every insurance company in the United States, you had written a letter, and the result of it all was thirteen reports of these examination fees required in advance. I would not have referred to this if Mr. Edge had not in his opening; but it was not fair, I don't think, for Mr. Edge to make such a comment, to give such coloring to his testimony, in the face of the facts. Out of those hundreds of letters you wrote, or which were written for you, what was the result? They nearly all came back to the insurance commissioner's office. The originals came back to the insurance commissioner's office. That is not a fair way to treat this man. The examinations are going on as fast as they can be made. The examinations will be made. Why, is it anything to hold a man up to ridicule for, that he has not examined companies since the first of January; is not making the examinations he should have made and for which advance fees have been paid, when he has been kept in the condition that this man has been kept in since the adjournment of the legislature; without any fault or consent on his part. The actuary is making the examinations every day. Have you heard, beyond the witness stand, a single complaint from a single insurance company that they were being extorted or held up, or that they had been extorted or held up? I do not think—counsel's statement to the contrary notwithstanding, in his opening speech—that they have been absolutely fair with us after all.

Now, I come to a hasty review of some of the thoughts expressed by Mr. Edge in his opening statement. He was very magnanimous in his opening when he said to you that he didn't want a single member of this Senate to be guided by anything but the law and the evidence, no matter what the verdict. Will you accept and fulfill the desire? Will you carry out such wishes of these managers? Will you only vote guilty when the law and the evidence points to the man's guilt? Will you absolutely divorce yourself of any ill will or personal feeling against the man? Will you accept this request? If you do, gentlemen, the word "guilty" will not be uttered by a single member of this body in the roll calls that will be made, not even to the perjury charge. That came here the pillar of this impeachment proceeding—

BY SENATOR PRESBY: Mr. President, I do not know why we should punish ourselves and remain here when we are physically and mentally fatigued. I do not know what urgent necessity requires it. I, therefore, move that we now adjourn until nine o'clock tomorrow morning.

BY SENATOR WILLIAMS: I second the motion.

BY THE PRESIDENT: It is regularly moved and seconded that the court now take a recess until nine o'clock tomorrow morning.

BY SENATOR FALCONER: I move as a substitute that we take a recess until 7:30 this evening.

BY SENATOR HUTCHINSON: I second the motion.

BY THE PRESIDENT: It is regularly moved and seconded as a substitute that we now take a recess until 7:30 this evening.

BY MR. ISRAEL: Mr. President, I would rather go on now than take a recess and then begin again this evening.

BY SENATOR PIPER: Mr. President, I would like to inquire of Mr. Israel why he would not like to discontinue now and take up the argument at 7:30 this evening.

BY MR. ISRAEL: I have two hours still, but I would rather go on now—even past six o'clock this evening—than have to discontinue now and then have to resume at an evening session.

BY SENATOR PIPER: It is very apparent to every one in this room that counsel is really fatigued and tired. I do not believe it is fair to him to have him come back here this evening. If he should finish early this evening, I do not think it is fair to Mr. Lee, and I hope that this substitute will not carry.

BY THE PRESIDENT: The chair is permitting the debate on the motion in recess, although it is not quite in order.

BY SENATOR STEVENSON: I want to emphasize what has been said by the gentleman from King. It is my desire, as it has been all the way through, and particularly at these closing scenes of this great drama, to have my mind centered upon the subject, and I feel that I have put in all of the time that I care to put in today. I am willing to stay here in pursuance of the motion to run this session until six o'clock, but I do protest against remaining here until later.

BY MR. LEE: I think, out of deference to Mr. Israel, that the court should take an adjournment now. If Mr. Israel can conclude in two hours, or say an hour or a half before noon in the morning, I would like to have the court take a recess until the afternoon session in order that I may make my notes and other preparations for such reply as I shall wish to make.

BY THE PRESIDENT: The chair considers that a very reasonable request and will hold with you.

BY SENATOR FALCONER: I understood that Mr. Israel is going to take not more than half an hour, according to his statement yesterday of what he thought he would require, and if I had known that he expected to take two hours longer I would not have made the motion. I will withdraw the motion, under these circumstances.

BY THE PRESIDENT: The motion is withdrawn. As many as are in favor of adjourning now until nine o'clock tomorrow morning say "Aye." The motion is carried.

The court of impeachment adjourned until 9:00 tomorrow morning.

SENATE CHAMBER,  
OLYMPIA, WASH., Thursday, August 26, 1909.

The Senate, sitting as a court of impeachment, convened at 9:00 a. m.

The roll was called, all members being present except Senators Graves and Nichols, excused.

BY SENATOR SMITH: Mr. President, I move at this time that the fines assessed to different members of this Senate for not being present be remitted.

BY THE PRESIDENT: It is moved and seconded that the fines assessed the different members be remitted. All those in favor of the motion say "Aye"; contrary, "No." The ayes have it.

BY SENATOR BROWN: I move at this time that a vote of thanks be tendered to the ladies of Olympia for the beautiful flowers furnished.

BY THE PRESIDENT: It has been moved and seconded that a vote of thanks be tendered to the ladies of Olympia for the flowers furnished. All those in favor of the motion say "Aye." The ayes have it. You may proceed, Mr. Israel.

BY MR. ISRAEL: *Your Honor, Gentlemen of the Court*—Before concluding what I have to say in the remainder of the presentation of the respondent's case to you, I want to first say, in justice to Senator Fishback, in my statement of yesterday, regarding the fact that letters had been sent out by the executive of this state to every insurance company in the United States, making inquiry regarding the collection by the insurance department of advance examination fees, and the amount paid for such examination, that I was not then aware, but now know it to be a fact, that the first letters in that regard were written by Senator Fishback—by the committee—from data that he (Senator Fishback), individually obtained in the insurance department, and that I should not be understood, nor do I now want to say that the first letters sent out by this committee were those of the executive; but I do not want to withdraw the statement that such letters were written by the executive of this state.

I also want to address myself to a question rather in the light of personal privilege. If what I am about to say is predicated upon a wrong report, then it is unnecessary for me to add that no harm is done, and nothing is intended by these remarks, but if what is reported to me is true, I want to say to Senator Paulhamus—and I will first state that the report is—

BY SENATOR PAULHAMUS: I do not think it is necessary or proper on the part of counsel for the defense to bring any personal matters into this argument. In my judgment, he should confine himself to the testimony, rather than to talk about some hearsay remark. I don't know what he is about to say, but it doesn't occur to me that what somebody else told him, what somebody else said, is a part of the evidence, or that it should be brought into the case at this time.

BY THE PRESIDENT: The chair will rule that whatever Mr. Israel has to say, that he may say it, and if it is in regard to any member of the Senate, that member has a chance to reply when the case closes. At that time no one on the floor of the Senate will be shut off who desires to be heard.

BY MR. ISRAEL: I will not, in view of the senator's objection, enter into a detailed statement of anything that I have heard, but I will hold myself responsible for this statement, everywhere and anywhere, and the fact that it is the only statement of the kind or character ever made in the presence of Senator Paulhamus or any other senator. While John Schively was on the witness stand under a grilling cross-examination, testifying to facts—attempting to testify to facts that I knew were absolutely true—I seated myself while listening to him in Senator Metcalf's seat, and I remarked to Senator Paulhamus, "John Schively is the worst witness I ever saw, and don't seem to be able to tell the truth when he is telling the truth." And that is all that I ever said in the presence of Senator Paulhamus.

Now, gentlemen, apologizing to you for this digression, before passing beyond this question of deputyship, and who is an officer as a deputy, and who is not an officer as a deputy, it being conceded—and it must be conceded by the prosecution, because it is the law and there is no escaping it—that if you were to wipe out and nullify the effect of the attorney general's advice and interpretation of the law for these officers upon which they founded a departmental rule, and are going to hold that notwithstanding that unanswerable argument that corruption or corrupt motives or desires are established without proof of criminal purpose and intent, either in a court of impeachment or elsewhere; if you are to brush the fact of that advice aside and say the acts charged were criminally and corruptly done—still as a court of impeachment for the purpose of impeaching anybody—you would have to further find, to uphold this court's jurisdiction, that the person who so did was an officer, or else you would be without jurisdiction. Criminal courts might punish for the extortion, but you only reach an officer, to remove and punish such officer by removal, because he was an officer at the time of committing the act. Now then, this is just illustrative. Supposing the fact that John Schively had been elected governor at the last general election; you wouldn't for a moment attempt to impeach him as governor, after ratification and indorsement of his past record by vote of the people of the state, for something that he had done as insurance commissioner. The absurdity of that would appeal to you at once; yet that is the working out of the situation here under the claim of the managers.

Now, it has occurred to me since presenting the law to you yesterday, in light of the fact that the assistant attorney general has argued already in this case, that this man was an officer by force of his construction of the section of the law providing for a deputy insurance commissioner, that the whole matter has been settled—the question settled in this state by your attorney general and as well the



supreme court—while Schively was deputy insurance commissioner, and when the very question was involved as to whether he was an officer or not. You are all familiar with the constitutional provision as to the increasing of salaries in office during the term of the incumbent's office. I need not dwell upon that feature, because it has been tried out in your supreme court by a half dozen state officers. You are familiar with the decisions. Now, I call your attention to the case of Mr. Davis. He was a deputy under appointment by the governor for a fixed term, under oath and bond, whose salary was attempted to be increased by appropriation during his term of office, and the supreme court held that he was a state officer. Still, notwithstanding that, in 1903 you raised the salary of the deputy insurance commissioner from \$1,500 to \$1,800 right at the time he was serving as deputy under his appointment by Nichols, and he was given the increase, commencing at the time of the act going into effect—from that minute on, in his position as deputy insurance commissioner, and under the unquestioned written opinion of the attorney general's office of this state that he was not a state officer. So then, how are you going to determine the fact that Schively was a state officer, that Schively's term as deputy insurance commissioner was that of a state officer, and yet admit that the salary could be increased by the legislature at will; that he could be put out at will, and there was no term of office to expire? I simply offer that act and opinion this morning in addition to the law before cited, as it was and is, and has been interpreted by your own state court and officers, it not having occurred to me yesterday that this very question had been passed on as to this very office in this state. The opinion was written by A. J. Faulkner—as bright a lawyer as there is in the State of Washington, now in the employ of the Seattle Electric Company at a salary of \$6,000 a year—holding Schively's increase in salary not within the inhibition of the constitution of this state and not being an increase in salary of a public officer. How are you going to get away from this position? I know it will be urged on the close—the same argument that has been urged in the trial—for a contra construction of this section creating the office. I go back all the time to the generally accepted definition of who is an officer, what deputy is an officer, and what deputy is an employee, through the authorities I have cited up to the construction in this statute by the attorney general, and the supreme court in distinguishing between the office of Deputy Davis and that of Deputy Schively.

Now, gentlemen, it is to your benefit and to my annoyance that I did not complete this argument last night, even if it took until midnight, rather than attempt to overcome physical weariness and continue it this morning—because I find my physical condition worse than it was last night, and the poor condition of my throat and voice aggravated from what it was last night—so you are going to get the benefit of it by my not taking but a very little more of your time this

morning. I will be as brief as I can consistently and still touch on the other features of this case.

I was a little surprised when the gentleman who opened this case came to article 25 and never discussed it at all—surprised at his opinion as to that article—because in the very beginning I understood him to say to the Senate he wanted this case tried under the law and under the evidence, and the oaths of the senators; wanted to be fair, and tried to be fair; and with those statements, when he coupled with them the statement that he was urging the conviction of Schively of perjury in this court, in this case; that he believed that perjury had been established, I was startled. Because, as a criminal charge, when the facts necessary to have been proven, with all of the elements to constitute the crime, are contrasted with the proof actually made, there is no more proof of perjury against John Schively in this case than there is proof of murder. How counsel can conceive that he is honest in his argument and still be of the opinion that there should be a conviction of perjury under the testimony offered this Senate is beyond my understanding. Now, what is perjury? That is a criminal charge. I don't care whether you are going to try it before a board of managers, or before a Senate, or before a criminal court; the elements of the crime remain the same. The proof to be adduced is the same. The establishment of the necessary facts constituting the crime beyond a reasonable doubt and to a moral certainty by the evidence is as necessary as if it were a criminal court. The effect of the judgment is the same, with the exception of the imprisonment. I will read from Wharton on Criminal Law, 10th edition, second volume, and from section 1244:

Perjury is an offense, as now modified by statute generally defined, as a corrupt assertion or falsehood under oath or affirmation by legal authority for the purpose of influencing the course of the law; or, to give a definition drawn from the older common law authorities, it is the willful assertion as to a matter of fact, opinion, belief, or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court, or in an affidavit, or otherwise, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury, or the person holding the proceeding. The offense consists in swearing falsely and corruptly, without probable cause of belief; not in swearing rashly or inconsiderately, according to belief. The false oath, if taken from inadvertence or mistake, cannot amount to voluntary and corrupt perjury. An oath is willful when taken with deliberation, and not through surprise or confusion, or a *bona fide* mistake as to the facts, in which latter cases perjury does not lie.

That is Mr. Wharton's definition of perjury. The rule will not be disputed, and that is the rule under which to measure this evidence.

Now, I am going to take but very little time upon this evidence. To quote the expression at one time used in this state by an eminent statesman, "I'm just going to hit the high places"; and it seems to me they are enough. In doing so I shall simply follow some of the asser-

tions of Mr. Edge in his recollection of the testimony. I think that I may select one statement to cluster all the answer about, as made by Mr. Edge. And you will recollect it. He said, "There is no question in the minds of the senators but what Schively signed those notes." Well, maybe that is true. There is a question in my mind that he ever signed any notes, but there is no question in my mind that if he did sign any notes he signed them as president of the Live Stock Association, and everything in the record points to it. I am not prepared to say that John Schively's name went on those notes, but I am prepared to assert, and I think prove by the record, that if his name was there, it was there as president of the Live Stock Company, and inadvertently, as he testified when he answered Schrock's assertion, put there without his knowledge that he was obligating himself to anybody—but, as he says, "signing the papers that were put before him, if any were put before him that night." And I make that assertion by the proof to my mind that irresistably points to it, that clusters all about this case, in the books, and from the absences. The first thing that I want to know is, What became of those notes? Why cannot we see who signed them? The evidence, to my mind, puts them into the possession of Schrock, as fast as they were paid, and never gets them out of his possession, and I believe they are there now, if they exist. Why? Because, aside from Schrock's possession, outside that of the bank's, we are unable to ever find them elsewhere. McDonald saw the notes in Schrock's possession, not, as Brother Edge has asserted, as attorney for John Schively, but as a mutual friend while assistant attorney general of this state. That was the testimony, Brother Edge. McDonald saw them for the purpose of verifying Schively's statement that he never had received anything from the company but \$400.00 per month flat salary. Schrock produced them in the office for McDonald. McDonald simply looked at them to verify who the payee was—paid no attention to the signatures; that was not a question that was directed to his attention at all, or to Schively's. But, Mr. Edge, the record shows that McDonald says that his impression now is that those notes were executed by the stock company. At the subsequent visit of Schrock in McDonald's office after the indictment for perjury, what does Schrock tell McDonald—that Ward wanted the Schively signature on the notes to make them stronger. Now, how does the stock company or any other corporation execute notes? How did that stock company draw its checks and make its notes? Read the checks: "The Pacific Live Stock Association, by E. R. Ward, president; J. B. Schrock, manager." They so read, all of them. How did they execute the notes? The Pacific Live Stock Association—if they had a president and manager—by blank, president; blank, manager. How would they have executed a note to this president for \$1,200.00 after he had resigned, and the note made payable to him? The Pacific Live Stock Association, by Schrock, manager; and there is no president to sign it. How would Ward conceive that the note could be strengthened by Schively's signature? Why, as president, completing the act as he and Schrock used to do

it, and if John Schively's signature ever got on those notes, it got there at the instance of Ward, thinking to strengthen the note by having the new president's signature. Schrock knows it and Schrock holds the notes. Schrock made away with the notes in the beginning. Do you think they were in Charley Murray's possession when the receiver was appointed? No, Mr. Murray has no recollection of receiving any such notes as those, in checking over the surrender. Were they in Schrock's possession after Murray's surrender? Undoubtedly. He admits they were; McDonald the same thing. Did they ever get in possession of the new receiver? If we are to believe the Spokane witnesses, they never did; never got out of the possession of Schrock. Why? Because they were the obligations of the Pacific Live Stock Association, creating an indebtedness that they had no right to create, paid off with the moneys of the association as a debt they had no right to pay, done by Schrock, at the instigation of Schrock to get rid of Ward; and if brought to light in the hands of the receiver, an embezzlement of the funds—establishing an embezzlement of the funds diverted to an unlawful purpose from the moneys of the association. When this association is being investigated, what would Schrock naturally do? First, get rid of the notes. Second, go before the grand jury and lie as to who executed them; because if they had been Schively's individual notes, there would have been no embezzlement, because they would have been paid off by John Schively. Now, as Schrock intended the ultimate result should be—as he started in to do the moment that Schively came in as president—to give Schively premium commissions on the books, yet pay him \$400.00 a month, and make Schively, without knowing it, pay off the Ward notes with the difference between \$400.00 a month that he was drawing down and the commissions that he did not know anything about that he was getting credit with. And those were the instructions that Schrock gave. To whom? To the head bookkeeper. And who was that gentleman? You people of Spokane who have been outraged by the awful perjuries of John Schively, did you hunt up Shallenberger, the man who knew all about the books? No, you never held Mr. Shallenberger. Hunter was the mere assistant that kept up the office and kept the books as he received orders to do so from Shallenberger. Where was he when the grand jury indicted John Schively in Spokane? His name was not among the list for the grand jury. They are indorsed on the indictment for perjury set up in Schively's answer by exhibit, being a certified copy under the seal of the Spokane court. Shallenberger is not there.

By Mr. MANAGER EDGE: Mr. Israel, I might say for your information that he skipped out of the state and we could not get service on him.

By Mr. ISRAEL: Skipped out of the state! Well might he run—the dirty tool of a dirty manager! Setting up a false set of books to rob the stockholders of the company. Well might he run. I am glad to know it. It was the natural thing for Shallenberger to do. It is the very statement that acquits John Schively of perjury. Did Bennington

run, too? Where is Bennington? Where is the man that credited John Schively upon the books \$400 to get out of the company? Why, in the indictment it says that Schively had perjured himself before the grand jury by willfully and corruptly swearing that he never received \$400 from Bennington? Where is Bennington? I am informed that he used to be at Ritzville. Is he there now or did he run? Would an honest grand jury, sitting in an honest investigation over a man for the purpose of honestly discovering whether he had committed perjury or not, satisfy themselves without calling such important witnesses as Shallenberger, who ran, and Bennington, who probably ran also? Would an honest grand jury or an honestly conducted grand jury—I want to take that all back. I believe that that grand jury was absolutely an honest body, but, like the average grand jury, they were dominated, swayed and handled, and did not know it, constantly by the prosecuting attorney's office, and they were dominated, handled and used by that unspeakable dog, that cheap "Pan-Tan," who has now resigned as a "Pan-Tan," as I read the other day—who has promptly run under fire with the announcement that he had not been very long a member, and so he could not do much damage if he should get down and out. That is the way his resignation read to me. That unspeakably, perjuring witness had charge of that grand jury. Perjured? Why, the last word from the witness stand out of his foul mouth was a perjury. Just before he walked out of this room, to the tittering of the spectators and the Senate, he had excused himself for riding up and down the elevator because he sat down to talk with the boy. And there never was, is not now and there never has been a seat or chair of any kind in that elevator. Dismissed from this stand, answering the last question with a foul lie in his mouth. And that is the man who indicted John Schively for perjury. That is the man whom Schrock testified before, whom Ward testified before, and Ward's wife, that the notes were the notes of John Schively. Now, hark your recollection back to Mr. Ward and Mrs. Ward on the stand before this note question developed; and they both swore that those were Schively's notes, and she swore that she had them in her possession for three days, and there was nobody's name on them but Schively's. Now, Schively never dreamed that he was being jobbed before this grand jury by this honest(?) prosecutor, this drunken, unspeakable, red-headed dog from Spokane—and my statement goes everywhere as well as here. When he had Ward and his wife before the grand jury and they gave this testimony to aid Schrock in protecting his dirty larceny—not done by him, because he was not capable of doing it—but done by the master mind of this Shallenberger, who ran when the time came to explain. When this brilliant representative of the district attorney's office of Spokane learned from those witnesses whom they claimed executed the notes and learned that they were hypothecated for a loan as collateral at the Fidelity bank, will any man tell me that another, with as much sense as God will allow the proverbial goose, would not have gone, or sent a messenger, at once to that bank

to see what the record was as to those notes? Wouldn't it be the first inquiry to check upon the statement that they were Schively's notes after Schively had come before the body and refused to indorse the statement? Was it done? Why, no; Schively was for a day and a half brow-beaten by Donovan in an attempt to make him say that he did sign the notes, and when he refused to say it, he indicted him for perjury, upon the word of Ward and his wife and Schrock; while right down the street was this silent evidence of the fact that the notes—Mr. and Mrs. Ward to the contrary notwithstanding—where they had been noted on the books of that company and collected, were the notes of the Live Stock Association. And that is the honest indicting of a man. I don't know whose tool Donovan was. That he was a tool of some of those who, as the enemies of John Schively, were then working for his downfall, is apparent. Allow him to be indicted on such testimony, without trying to verify the testimony, makes it apparent. But it was a dishonorable, dishonest indictment of the man—almost as bad as another case that I have in mind in the history of this state, which was simply ludicrous because it did not occur under such conditions as this; but is an example of the work of your average grand jury in the hands of a prosecuting officer, the tool of a bunch of politicians. If my memory serves me right, there is a senator here today, as one of the honorable members of this body, and in this chamber—a senator who went before a grand jury and answered a certain question "Yes." The stenographic notes were afterwards made to show that he answered the question "No." And then they indicted him for perjury. If you hunt him out at the recess, he will verify my story. One of your honorable members indicted for perjury, by changing the record in the grand jury room to make him negative a proposition that he had affirmed; and then charged with perjury for negating it. That was another honest grand jury. It was never heard of any further—that grand jury or that indictment, no more than the Schively indictment will be heard of any further in Spokane. But all of this is directed not to the fact that I have any belief in my mind that a single senator within in sound of my voice—irrespective of the fact that these impeachment charges are going to go to a final vote—considers any longer the charge of perjury against Schively. It is simply in answer to the Edge statement that he yet believed that Schively did commit willful and corrupt perjury. How he can as a lawyer I don't know.

Now then, on more thought in regard to this mingling of perjury here and perjury there in the argument. That is these books. Mr. Edge says, "Why, John Schively makes one assertion and all these witnesses contradict him." Well, all of these witnesses that can talk, try to contradict him, but all the silent witnesses in the case corroborate him. Now, I believe there has been passed around among you reproduction copies of that so-called settlement sheet that it was claimed was made out for Schively's settlement by Hunter, the bookkeeper, who had to finally admit that it was not made until a day or two after Schively had left the office; that it was made out before he passed the

items into the ledger; that he passed the items from it to the ledger and that Schively had had his \$260.50 from Schrock before he made it out, when it showed a balance of \$400 against Schively. I do not believe that you had passed among you (you may have, and I may be in error), the calculation from Schively's books showing that he was only two cents in error with the check from Schrock on the 8th of August. But Mr. Edge took it upon himself, for some reason, probably from a faulty recollection of the testimony, to say that we had to go out of our way to establish a thirty-dollar item, out of John Schively's mouth, on a "superstitious" horse in order to make it balance. Now, as to the "superstitious" horse, he is again in error; it was neither superstitious nor supposititious; it was a real horse, one of twelve head, says Schively, undisputed, the property of Mr. Schrock—Mr. Schrock (always Schrock), who said to him: "To be a member of this association, you have got to carry insurance; it is a mutual company. You have no animal to insure. I will give you one of those horses on the range, and we will insure him for \$75 and make out the premium note against you and file it with the note clerk." And it was done—just as you go tomorrow and create a corporation and use three men to make a board of trustees by giving them each one share of stock, and probably employing them as clerks in your office, to comply with the law of corporations. Nothing wrong, corrupt or criminal about it. Now then, Schively was coming away; when he is getting ready to make this settlement, he calls Schrock's attention to the existence of the note and goes over to the note clerk and gets it and settles it. Why? For the reason he gave at the time; he is leaving the company. It stands apparently as a charge against him, as an indebtedness against him to the stock company. It was necessary for him, in order to be legally an officer of the company, to have had such insurance; and it was legally necessary that he pay the premium; and having paid the premium by premium note, as an honest man he would discharge the note to the corporation, because it was the corporation's money, not his nor Schrock's. And as to the \$30 item that Schrock borrowed—used to finish his settlement—Schrock put that on the books after he had settled with John, when Shallenberger doctored them for Bennington's benefit, or somebody else's benefit; or endeavored to get them in some kind of shape so that they would apparently balance off his Ward notes. He himself used the thirty dollars. Now, you will observe, senators, over in the balance—on the credit side of the ledger account, down near the bottom—seven entries made on the 8th of October, the day John settled up, which the bookkeeper says were not put on the ledger until after they had been first put onto this account—this balance sheet—six or seven items of credit to make John's account balance. And one of those items, the first, is Bennington's, credited as having paid the association \$400 to the credit of Schively. That was necessary, because under the account as it was in the books up to that minute Schively owed the company, according to the books—at the time he had taken the \$260.50 check—he owed the company \$200.00. So the Bennington

item of \$400 we check. Then comes the next item, a credit of \$30 from Schrock, by check No. 4055, which is supposed to appear in the journal at page 198, but when you turn to page 198 to find the \$30 credit, you find there that the entry was under date of September 25th and that it was a charge to Schively of \$30.00 under a differently numbered check entirely. Here is the entry: "October 8th. W. J. Bennington to J. H. Schively, \$400.00, as per agreement. J. B. Schrock to J. H. Schively; Check No. 5044. This entry made as per instructions of J. B. Schrock." But they got things balled up, because the ledger shows that this October 8th credit of Schrock of \$30.00 was check No. 4055, while this credit by Schrock on the 8th day of October is check No. 5044—"this entry made as per instructions of J. B. Schrock"—yet on the ledger he gives it a credit of Schrock on the same date as check No. 4055. Now we go over to the credit side of Schively's account and we find there a credit charge of large items: "10th of July, \$200.00; August 31st, \$500 00; September 30th, \$792.00; October 8th, \$753.00." But when we come to get at this itemized account, we don't find any such figures; but we find a check No. 5044, charged to Schively's account as \$30.00, and then when we go to the journal for this check and under date of September 24th, we find that J. H. Schively received \$30.00, according to their books, by this check No. 5044. Still in this sheet is this check No. 4055—

BY SENATOR FISHBACH: That is a transposition.

BY MR. ISRAEL: A transposition, yes; but charged by Schrock against himself and credited to Schively. Why did he do it upon any theory excepting that he was conscious of the fact that he owed Schively \$30, as Schively said he did? The cash transaction at the time of the settlement—and when Schrock, under the guiding hand of the runaway man, undertook to make the accounts balance. Shallenberger, in making up the itemized account, stated there was \$30 away back yonder that could be taken out and brought forward; it shows you, senator, the blending of ideas in the hunting out of an item to carry out the balance sought. The books showed Schively still owed them \$400. Now, I have been waiting for it to be claimed in this case that these pencil marks demonstrate an attempt to settle on a commission basis—an attempt by Schively to wipe out this \$400 on a commission basis. But the theory is exploded by the same pencil marks, the minute you analyze them. It is plain to my mind that Schrock was attempting to find sufficient discrepancies so as to get the \$400 credit to John out of errors in the account, figured on a commission basis, so that John would keep quiet about the account. It was a critical point with Schrock. The new board was coming together. The bookkeeper had exhibited the account whereby it appeared that Schively owed the company \$400 and everything would be serene in the future if John quit kicking. If anything could be done to the books so they would show Schively to be indebted \$400 to the company, all would be well; but Schively was too insistent, and had gotten Schrock to call off these figures in trying to find that \$400 excess, so Schrock had him subtract



from \$600, \$563.65, and get a result of \$36.35. If you take these items, \$36.35 and \$21.75, you get a result of \$57.65; then from that result take \$19.50 and it will give a result of \$38.15, but adding \$57.65 to the \$351.75 John had called attention to the—as he supposed—items before the 1st of July, you get practically \$409. I am not attempting to carry these figures in my mind accurately. It would apparently, at first blush, show an attempt at a settlement on a commission basis. Up in the corner here are some other figures in the same handwriting that are unaccounted for by Mr. Edge or anybody, the \$100 with the plus sign \$400, totaling \$500, and the figures \$560, and the figures \$19.50. But here comes the destruction of the theory of error to balance the account on a commission basis. Remember that the testimony, according to Schrock, was that Schively was to have a commission of three mills up to \$200,000, or a maximum of \$600 a month salary, the same as Ward was getting. Now, if the business written did not constitute the maximum, instead of the \$600, he would only get the millage at three mills on the business written. Now, according to the statement, the first millage in July for commissions ran on \$465,000 worth of business, and were credited at the full \$600 maximum, but on August 31st and on September 30th, where the millage produced a result less than the \$600, and he is credited accordingly with a less amount of millage because the business written was not sufficient to produce the maximum \$600. Now then, in order to get this balance, in order to get this result of \$400 for a credit to offset the apparent debit of Schively, Schrock would have to give Schively \$600 any way, and that is what he was trying to do—give it to him any how—the \$600, according to this theory—

BY THE PRESIDENT: The Senate will take a recess for ten minutes.

BY THE PRESIDENT: The Senate will come to order. Proceed, Mr. Israel.

BY MR. ISRAEL: *Mr. President and Gentlemen of the Senate*—I probably owe you an apology for having spent any time this morning upon this perjury charge at all, but I have been filled with the sense of the outrage of it all to such an extent that I could not abide in peace—especially after what Mr. Edge had said regarding his yet abiding conviction of the guilt of Schively of perjury and his honest opinions. However, I am convinced that it was due to the ardour of debate rather than a premeditated statement. I promise you now to devote myself for but a moment longer to that—to refer to the authorities cited by Mr. Edge, as I promised—as to which are inapplicable to these matters in hand; and then I shall leave this matter, so far as my task and duties are concerned, with you. There is lots of law in the law books that has caused the layman many times to say there was too much law and too little justice; and in all probability it is true. We can go into the books and find a case where the law is declared so that it would seem to fit our every contention, if we don't also look at the facts that were under discussion at the time by the court that limits the opinion. The rules of the law permit some expansion. They are not absolutely rigid.

If they were, the court could not apply them at all. Every court in passing upon a legal proposition is bound to be controlled by the facts under discussion; and while the rule may be applied to one set of facts it would not apply to another set of facts. So the layman's mind may be easily confused as to what the law is by using a case that is not at all parallel upon the facts, and assuming the contrary to be the case, urge it as the law in the case that may be under discussion, while as a matter of fact the facts were entirely different. An attorney at law, to get the law before such a body as this, which is to decide both questions of law and fact, should be very careful to select the cases that announce a rule of law where the facts are somewhat similar, or as similar as possible, or, to use a term that is current among lawyers, "on all fours" with the case at bar, or the case that is being tried. When we apply that rule of selection to the cases urged by the member of the board of managers, their cases have no application to the case we have under discussion. [*To Mr. Manager Edge.*] Will you let me have that case you cited from the 14th Southern Reporter?

While counsel is looking for that case, take the 14th Southern Reporter, page 30. Here is the case of State vs. Hill. It is a citation referred to by counsel, and I will read the syllabus. The syllabus is the headline in each report, in which the reporter includes the meat of the decision; that law that is announced in the case. This is the syllabi: "The power of impeachment conferred by the constitution upon the legislature extends only to civil officers of the state." We don't deny that proposition as a proposition of law; but we say the articles of impeachment exhibited here were not exhibited against an officer of the state at all; that they were exhibited against a man who was not an officer in any sense of the word at the time they were exhibited. They are exhibited against a man for something done, even if we were to concede it was wrong (which we do not), which cannot be under the law—cannot be a wrong—but even conceding it, we have no quarrel with the proposition that the power of impeachment conferred by the constitution upon the legislature extends only to civil officers. That is true. Second, "Private citizens are not amenable to impeachment." That is our contention. The deputy insurance commissioner was a mere private citizen at that time. Third, "The legislature has no authority to prefer articles of impeachment against an ex-official." We don't dispute that. That is the law, and the legislature would be powerless against an ex-official. There *are* authorities to the contrary; to the converse of that proposition. Fourth, "The legislature cannot exhibit articles against a man who has resigned pending the drawing of the article and proceed to take jurisdiction." There is no quarrel with this authority; it is the law. But it has no application here, because the man was not an officer, either in the present or past terms at the time of the exhibition. So this authority is of no benefit to us. I have shown you that this man at the time of these articles was not under oath; was subject to be dismissed at will; was not an officer in any

respect. Now, taking the 14th Southern Reporter, page 30— Counsel evidently has returned it to the library—

BY MR. MANAGER EDGE: The stenographer took these books away in the preparation of the record. The 14th Southern Reporter I left on the table.

BY MR. ISRAEL: The 11th Nebraska 161, that is gone, too. The 22d Vermont—

BY THE PRESIDENT: I will assume any responsibility for these books being gone.

BY MR. ISRAEL: Vermont is a common law state—common law really in the books. Common law is really English law. The rule of the common law is, in the absence of statutory enactment and change of procedure— I admit the common law made it extortion to collect a fee in advance of the performance of the duty; but that is not the law of the State of Washington. The attorney general was right when he advised the commissioner that a fee could be charged in advance. It would have been right to have charged it any way; it was the privilege of every officer in the state. It is the law of this state. This case has no application to the law that governs the State of Washington.

In the 47th Missouri, 416— I think that is here. This was not the trial of a party who had performed the acts as a deputy. It was the acts of an officer recognized to be an officer. It was not claimed that he was acting under the advice of anybody—much less the advice of the attorney general, or the legal adviser who directs the offices of the state. Twenty-fifth American Reports, page 610, State vs. somebody— These all seem to be gone.

BY THE PRESIDENT: I will hold myself responsible for these books being gone if there is any blame attached.

BY MR. ISRAEL: Well, I will say, your honor, that I think the statement in my notes I made at the time will be sufficient as to this case. It was not the trial of an officer; it was the trial of a mere individual. It was not under the constitution. It was a criminal trial for extortion, where no question of officer intervened. The court as a court of impeachment cannot try the criminal phase of an extortion without it be the act of an officer. It was read at the point in the argument that counsel allowed me by interruption to make the statement that he was being driven back by the force of his own authorities after he had apparently taken the position that these articles would lie against a deputy. In that connection he read a Utah case. Upon his contention that extortion, implied, without proof, corrupt motive and criminal intent—you will probably hear much of such argument in the close. I presume that, judging from the act itself, there is no justification of it. He read a Utah case, from up in the sagebrush among the Mormons; some fellow who was recorder in a mining camp and under the custom of the camp had charged \$3.00 for the recording of a notice, and it was paid under protest; and he was complained against for extortion; and the court held that he was bound to know the law and that he was guilty of extortion when he did this act. That is not good law. Every

once in a while we find a case in the books—as every lawyer in this body knows—that, to use the veriest vulgarism, is “rotten” as a proposition of law. It is a necessary consequence of the finite minds that write opinions. So just as an illustration, I thought I would bring you another recorder's case—an attorney general's case—in answer to those Utah contentions of counsel; not a recorder's case exactly, but a fee case. This is from the good state of Pennsylvania. The Pennsylvania supreme court, among lawyers, always has been regarded as one of the strongest courts in the Union when it comes to the enunciation of principles of law; and it is usually correct. So here is a case to contrast with the sagebrush case from Utah, where the fellow was probably a gentile, and two-thirds of the court Mormons. This is an information against a justice of the peace for extortion in taking illegal fees. This court says: “A rule had been made citing the defendant to show cause why an information should not be granted against him for extortion. The rule was granted and it appeared that on a writ of assault and battery the defendant received from Adams for the justice of peace twenty-three pounds, three shillings and sixpence.” This was under the common law, not a statute—under that broad rule of the common law that is being contended for here as extortion in this state in the face of the statute. “The facts were that a writ had been issued by this court for certain parties in the county. The sheriff deputed a person to serve the same, and there was a general ‘rough house.’ And when the fee bill was cast up and defendant called on the prisoners for his bill of costs he told him that he was dissatisfied with the bill and it should be taxed. Adams, the prosecutor, declared the bill was much more reasonable than he expected and expressed his satisfaction therewith.” This hearkens very much like some of the replies made by the insurance companies on the witness stand here. “The defendant further declared that if he had erred in his conduct that it was unintentional; that he had followed the usual practice of the justice of the peace in the county, and that this was the general usage of the justice of peace of that county.” After this statement of the facts the court said in following up this charge of criminal extortion:

The justice had no right, or the deputy, to fix their own fees. The defendant's conduct therefore, was not justified, but is against the law. The next question is whether or not it was excusable. It does not appear to us that there was a disposition of the defendant to oppress. He endeavored to accommodate the justice of the peace. There appears no criminal intentions or expressions of threats or violence. It is proven that the prosecutor believed the bill to be reasonable and that he paid it willingly. We are therefore unanimous of the opinion that there was no proper grounds for prosecution by way of information. At the same time we publicly express our opinion that the fees are illegal, and we hope after this discussion that this practice will be discontinued. We are also of the opinion and recommend to Mr. Hansen that his bill should be properly taxed.

And he was dismissed. Now, that was under the common law in the State of Pennsylvania. Examining the question of an extortion where there was no criminal intent or corrupt motive in making the collection,

now, there is one phase of the civil law that is very much akin to the criminal law, and that is malicious prosecution—malicious arrest. It is—its punishment while a civil action is a penalty, and the principle is punished—the party is punished in dollars and cents for the illegality of his act in causing the arrest or causing a warrant to issue; and there is a case in Minnesota I desire to call your attention to. It is found in the Minnesota Reports, volume 40. This was a case where a village was incorporated supposedly contrary to law, and immediately afterwards granted a license to a saloonkeeper supposedly contrary to law, and the saloonkeeper began selling liquors; and the officers of the county went to the attorney general of the state and laid the case before the attorney general; and he advised them to proceed with the arrest of the proprietor and the suppression of the place; and they did so. The saloonkeeper went out. The law of incorporation was held to be good, and the incorporation good, and the license valid; and the saloonkeeper proceeded against these members of the county board for the malicious causing of his arrest; and they plead that they did it under the advice of the attorney general. The case is somewhat long, so I will cover it briefly as to the one point. This is what the court said in this case:

After the plaintiff opened his place of business without having obtained a village license, the circumstances of his case were presented to the attorney general and the county was by him advised to prosecute. There is no claim that this advice was not given as stated upon the trial, nor is there a pretense that any of these defendants did not act in entire good faith throughout the entire transaction, relying upon the assurance of the chief law officer of the state, to whom they had at the outset stated all of the facts and circumstances, and with whom they subsequently counseled with with reference to the prosecution of this plaintiff. It was upon his express advice that the steps were taken upon which is based this action. A charge of malicious prosecution is well met by proof that the proceeding was instituted in reliance, in good faith, upon the advice of competent legal counsel, received upon a full statement to him of the facts known to the prosecutor, or which he had reason to suppose existed; and this rule applies with still greater force when the proceeding is instituted upon the advice and approval of the prosecuting officer. And the rule is especially pertinent and relevant when the prosecution is commenced upon the suggestion and with the indorsement of the attorney general of the state.

They dismissed the appeal by reason of the fact that it was a wrongful act and an illegal act on the part of these officers. It had been done after the counsel and advice of the attorney general of the state, and, therefore, was shorn of its criminal intent, or its unlawful intent.

Now, I find I am again taking entirely too much time; and I am going to content myself with this very short review of what counsel said in their opening argument, coupled with what I said to you yesterday. But I want to take up with you for a moment these articles of impeachment and then I have concluded, gentlemen.

Under the rule that has been established by your court for the last act of this court, each senator is required as his name is called

to arise in his place and answer the categorical question as to whether John Schively, insurance commissioner of the State of Washington, is guilty or not guilty of the article which has then just been read by the secretary. The first article that you are called upon to pass judgment upon, as they remain after the elimination of more than one-half of them, is article 2. This is the article that charges extortion, malfeasance, unjust, arbitrary and oppressive conduct, in demanding and receiving of one Lebo one hundred dollars as an advance fee to be applied upon a future examination of his office, and permitting him to pay the balance on or before the time of his examination. The undisputed evidence shows that Lebo's companies went out of the state after the \$100 was received and before they were examined; the companies went out of the state and Lebo demanded his \$100; Schively said it should be forfeited; but after verifying from the company that it was not the company's \$100 but was in fact Lebo's \$100, it was returned to him. Now, there is no question, gentlemen—there can be no honest question—I think, left as to the right of the deputy insurance commissioner, irrespective of whether he was an officer or an employee—even conceding he was an officer (which he could not be and was not), but even for the purpose of going as far as we can go in overriding the law itself, this would not be an impeachable article—there is no question but the right to demand an examination fee in advance, as expressed by the attorney general to him, was the law. He had not made an examination; only had a part of the fee, and he returned it as soon as he determined that it was not the company's money that he was holding, but was Lebo's money. And so it seems to me that as to this article 2, it is unnecessary to discuss it a moment—that the verdict must be unanimous upon this article of "Not guilty." No matter how much any senator here might be influenced, notwithstanding his oath, by outside pressure, I can't see how he can vote "Guilty" on this article under any circumstances.

Articles 3 and 4 charge the collection of \$100 in one instance and \$200 in the other instance—I will discuss those articles together so that we may get along—for the examination fee, and the verification of the report. These are charged as extortion and malfeasance in office. Now, the situation as to those two articles is that the money was paid for the examination in advance under the circumstances that have been testified to, and collected under the advice of the attorney general; that the examination had not been made for the reasons testified, and that the examinations are now in progress—being made—and a report will be made without any further cost to the company. Now, to say that this was extortion is to say that without corrupt intent, without willful violation of the law, the mere act of taking the fee in advance is extortion. You know without any further argument that that is not true. You know when I challenged Mr. Edge in his opening statement, while I was back there in a senator's seat, with the question, "Do you claim that the common law of extortion is the law in this state?" he could not answer. Because it does not

obtain. You qualified it by your statute. The policy in this state is to collect everything in advance. The policy of the common law is to collect nothing in advance. So that on those two articles it does seem to me that, irrespective of any feeling against John Schively, they have got to go out with a verdict of "Not guilty."

That leaves naught but the perjury charge, which I believe is out without argument, and articles 17, 18, 19, 20, 21, 22 and 23, each and all of which the testimony shows simply to be and were under the flat rate. This flat rate was charged with the advice of the attorney general, without criminal intent, and without corrupt motive. As I said to you yesterday, these officers endeavored to adjust the situation under the law as you had given the law to that office, so that they should not be mulcted in private loss by your law. In charging the flat rate no crime, misdemeanor, or malfeasance in office has been committed. If you are going to override the situation you put your officers in; if you are going to override your attorney general's advice; if you are going to say that they acted corruptly notwithstanding that, then, even if Schively was a participant, you cannot convict him. Yet another barrier is immediately raised as to all of those articles by that which could have been, if we had seen fit, the only defense, and that is that he was not an officer. He is not on trial as an officer, and this court can only try a man for something done in office, either in the present or some past term of that office, and that barrier alone acquits John Schively. But we don't—we did not see fit to rely upon it alone. We are now doing that which the newspapers charged all the time we would not do and could not do—justifying our acts under the law so far as criminal responsibility is concerned, no matter how wrongful the rule under which it was done, or how wrong the rule promulgated for its doing. We present a dual defence to this situation.

As to article 22 of these articles, which is that the charge of \$50 to that fire insurance company was arbitrary and greatly in excess of the expenses incurred, I don't care to discuss it. There is one article that you will vote "Not guilty" on, no matter what your feelings are in the matter.

Some of these witnesses consider that amount an extortionate charge, especially those like the one that disturbed my examination of a witness by quarreling over my head with Mr. Edge about his per diem. He told how cheap he could make the trip, and then kicked because Edge wouldn't allow him more than \$2 a day for coming over here; those are the kind of witnesses that testify how cheap a thing can be done. I have been to Spokane several times. I have known the town somewhat for the last four years. Every year I have been going over there with a bunch of my dogs to the Interstate Fair;—and they are all good fellows over there and I like the town—but 't wouldn't have done to put me on the stand to prove what the actual expense of going over there to Spokane was, and staying a day in Spokane. If they expect to prove a charge of \$50 extortionate, I can't

reach it with a hundred dollars, and I don't think any man who is inclined to be liberal and live decent can make the trip to Spokane and back under a fifty-dollar note; and he will have to fly pretty light all the time to do that, especially after he strikes that Riverside avenue. So I don't think because under article 22 it is alleged that John Schively charged \$50 for a trip over there that you are going to convict him of high crimes, misdemeanors and extortion, or overcharging necessary and actual expenses in going to Spokane and staying a day in the examination of a company when measured up by the test of your own experience regarding this same Spokane town.

A more serious article is article 24. That has been interwoven with the perjury charge. The meat of that article is gone with but one exception. I am discussing this case in closing as if this perjury charge was a thing of the past. That conclusion has so impressed itself on me that I cannot get away from it—that as to that perjury charge the unanimous verdict will be "Not guilty." In that article 24 is interwoven the charge of extortion in charging a flat rate to the Live Stock Company, which charge, as I see the evidence, has not been substantiated in any way, but, to the contrary, the payment that would be charged by the managers as examination fee went for other purposes, as reported by that holy of holies, Schrock, in his testimony. So it is not necessary that we take the testimony relied upon by the defense in this case, but we can search and reach out and take that part that so lies against them, because he was their witness and not ours.

Hence we will take up article 24, and argue it and have it passed upon by this honorable Senate, solely as to the question of double pay being a malfeasance and misdemeanor and a high crime, or extortion from anybody. Now, gentlemen, it is a case of "put yourself in his place," because if this was not done with a corrupt purpose, although it might be so illegal that the state could compel him to return those fees to the coffers of the state (and I doubt it most seriously), he is not guilty. Under the undisputed evidence, which there has not been the slightest attempt to contradict or deny, and which we must take as the truth, if we are to be bound by rules of evidence, which we must accept as the truth, if it is not impeached or denied, or contradicted—and that is the condition of the testimony regarding this matter—that it is undenied, uncontradicted and unimpeached in all its statements from Mr. Schively. Put yourselves, gentlemen, in his place before saying guilty of criminal intent, or criminal purpose, or being actuated by immoral or corrupt purpose. Put yourselves in the situation that he was in during the time that that money was being paid. Now, not for the purpose of appealing to you for any sympathy, remember who John Schively was at that time, and what his family connections were and who was dependent upon him, and what it costs to maintain a son at West Point, and a daughter at the University, as well as home expenses.



Schively left Sam Nichols to better his condition, to go where he could make more money, to get \$400 a month and pay his own expenses out of it. He was getting \$1,800 a year, or \$150 a month, in the insurance department. He voluntarily left in 1906 to better his condition. He left his office as deputy insurance commissioner at \$150 a month to get \$400, or an increase of \$250, and yet these gentlemen would have us understand by innuendo and damning, double damning suspicion, that in 1906 John Schively was pulling down with Sam Nichols thousands of dollars of money in advance fees. Why, gentlemen, the situations won't dovetail with one another. John Schively, the corrupt; John Schively, the dishonest; John Schively, the criminal; John Schively, the hounded, deliberately walked away from a graft that was paying \$150 a month salary and thousands of dollars a year illegal fees to get \$400 a month. That is the situation, if we accept the arguments that have been made, and will be made as to the awfulness of this graft. The newspapers have howled it up one side and down the other. But, gentlemen, through all of these proceedings, from the meeting of the committee of 1907 down to date, whether newspaper trial, executive trial, committee trial, or the trial before the Spokane grand jury, or the trial here, never have I heard it asserted that John Schively was either a subject for the insane asylum or imbecile home; and if this corrupt, black-hearted, thieving, grafting officer wasn't either an idiot or *non compos mentis* in 1906, the high tide of the graft, according to the bellowing of your newspapers, he deliberately walked away from those hundreds and thousands of dollars of graft to go to work for \$400 a month, and thereby receive \$250 in excess of his former legitimate salary. Any proof in that that the only companies required to pay in advance were the companies the office didn't know? Any proof in that of the fact that when a company showed satisfactorily that they would pay when they were examined, they were forgiven? If you want to indulge in comparison and surmise as to who was nearer the truth, Edge or I—Edge with his problematic question hurled at the witness in which he figured \$36,000 advance fees and over \$20,000 of it in 1906, or Schively, who says during the entire period there wasn't to exceed 40 companies charged the advance fee—find how Edge's statement tabs and jibes with John Schively going to work for the Live Stock Company for \$400 a month in 1906. I say, put yourself in his place. He goes over there; he goes to work; his resignation has been put in the hands of the secretary of state; the secretary of state is looking for some one else to take his place. Schively discovers the situation over there—a house divided against itself must fall—and right in this connection, Counsel Edge wanted to know why they didn't resign Ward out of office? Counsel Edge forgets that Schrock and Copeland, brother-in-law of Schrock, were pulling one way, while Walker and Ward were pulling the other. They couldn't resign anybody out of office

without the fifth vote; it was a deadlock. So Schrock and Copeland were mighty glad to get rid of Ward, and put Schively in, even if they had to juggle the books and pay the money of the stockholders to accomplish the purpose. And do you find hunter here testifying? Do you find any directors testifying but Schrock and his brother-in-law, among the trustees? No, you would undoubtedly get a different story from the other trustees; they probably wouldn't tell the same story as the disinterested witnesses, as Brother Edge calls Copeland and Schrock. He disinterested, when his brother-in-law is under charge of embezzling and he one of the parties who helped do the embezzling? He disinterested? My God, gentlemen, maybe he is in Donovan's court, but he wouldn't in any other court on earth. So put yourselves in his place. A letter to Sam Nichols, "If you haven't found anybody yet, I want to come back." Sam hadn't found anybody. He wrote to him, "Come back as soon as you can." Then he goes to Schrock and says, "I want out; you will have to get somebody else to take this presidency; I am going to leave you." And he tells him why: "Your concern can't help but make money, can't help but make good, but I can't do anything for you in improving the policies in the situation I am in." Schrock begs him not to go, because it will hurt the company—you remember his testimony. It would hurt the company's reputation. Then begins a temporizing; Schrock not in any hurry to get anybody. John is running back and forth between there and Olympia, performing the duties of insurance commissioner, and doing the perfunctory work, the little work required to be done by the Stock Association. His hands had been tied over there; he is a mere letter written; he is willing to take the \$400 a month for it notwithstanding. And I don't blame him and you can't blame him. He was performing his duties, yet he was performing nine-tenths of the work he was doing as insurance commissioner. He was a mere figurehead over there; yet there was no graft in taking the \$400 a month under the circumstances. Put yourselves in his place. Schrock doesn't get a manager. Time rolls on. John became more insistent until finally Bennington appears on the scene and at the urgent request, constantly made on the part of Schively, Bennington finally qualifies on the 8th day of October. And during all of that time he has managed to keep the insurance department going—that is, the departmental routine work. There is a question raised as to why he didn't go east and make examinations at that time. Why, if he hadn't been connected with the Live Stock Company at all, he couldn't have got away from his departmental work to be gone over that thirty odd days or six weeks necessary to making those examinations. The work was coming into the office so fast that he couldn't absent himself for such length of time, but he could keep up the departmental work, by his almost daily trips, once or twice a week between Spokane and Olympia, going and coming, dividing up his time—the most of his time here and a little or none over there. Any grafting done? The graft was in not doing anything for the \$400 in Spokane. He kept up his office here and under

the circumstances it was no graft upon that band of pirates to take his pay from them, although he was relegated to letter writing at \$400 a month. So I say, put yourselves in his place. There is nothing either corrupt, wrongful or unlawful in the taking of his pay as insurance commissioner during that unhappy condition of affairs; and if you must build your hope of conviction upon article 24, then God pity us! If a man is to be turned down from a high place, crushed beneath our very feet, his citizenship destroyed, his right to hold office taken away from him, he branded with the brand of Cain for the balance of his existence and life by reason of any such conditions as these, then God pity us all!

Oh, that I could find that hidden hand, that hidden hand! All the way through from the beginning of this prosecution to the present moment I have felt it. If I could only find that hidden hand and lay it bare there before you. Here I see it; there I see it; yonder I see it; but never is it clutchable. With the organization of the investigation committee, it flutters mysteriously in the dim lights of the capitol dome over the heads of the legislators, discernable, but yet not seen. As that committee goes forth on its mission, honest in its purpose, its constant presence is felt about the windows of the examination room, and when, after the truth is gotten out, there is a constant pressure of the hand upon those who would stand for the innocence and justification of Schively. There we feel the press of that irresistible hand. As the labors of that committee come to be formulated, we feel it; we know it; we almost see its slimy fingers on the door knob of the grand jury room in Spokane. In opening the door it brings forth its villanious, awful, corrupt, damnable indictment. In the newspapers it is constantly reflected; something beyond the policies of animus; something beyond the policies of political enmity; a something always guiding and directing; when and how and where we know not; it drops its slimy indictment finally into these articles of impeachment, and then suddenly that perjury charge becomes the pillar of these articles. And when I would fight it and stand not only for the law, but for fairness, and say, "Don't try this man for this awful crime of perjury here"; many of you have pre-judged his guilt as to other matters already; and you wouldn't be competent jurymen, even if you are competent senators; take it out and send it back to Spokane and let the criminal court deal with it; even then I feel the clutch of that invisible hand pushing me back and down and hear the words, "Defend yourself against it." But, gentlemen, in that particular I have triumphed over the hand; and it remains to be seen within the time of the setting of the sun whether we have triumphed over the hand in all of these other articles. The rock to which I have anchored my hope is this oath, "I solemnly swear that in all things pertaining to the trial of the impeachment of John H. Schively"—aye, a just and omnipotent God on high witness it—"I will do impartial justice according to the law and the evidence that may be produced before this body upon the hearing of such proceedings. So HELP ME God." And

thus with this oath do I expect to triumph over the hand. Thus with this oath, backed by the law and backed by the facts, with all the law with me, with all the facts with me—"that I will do impartial justice"—do I expect to escape from the awful clutch of that invisible hand, guiding and directing and attempting the downfall of an innocent man. Gentlemen, I thank you.

BY MR. LEE: Mr. President, it is now 11:30, and I think it would be unjust to the Senate to continue this argument at this time, and as for my own part, I would prefer to wait until one o'clock.

BY THE PRESIDENT: If there is no objection, the court will stand adjourned until one o'clock.

The court of impeachment adjourned until 1 p. m.

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### AFTERNOON SESSION.

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The Senate, sitting as a court of impeachment, convened at 1 p. m., all members being present except Senators Graves and Nichols, who were excused.

BY SENATOR ALLEN: I desire to introduce a resolution.

BY THE PRESIDENT: You may have the opportunity after the roll is called.

BY THE PRESIDENT: The secretary will read the resolution.

BY THE SECRETARY: "*Resolved*, That when the argument for the state is closed, the Senate shall, without debate, proceed to ballot upon the separate articles of impeachment. Any senator desiring to explain his vote shall reduce such explanation to writing and file the same with the secretary, who shall read such explanations before the vote is had, and the roll call shall then proceed without interruption."

BY SENATOR ALLEN: I move the adoption of this resolution, notwithstanding the unfortunate word used in the headlines of a morning paper. It is not the desire of myself or any of my friends to muzzle the Senate. The business of the Senate will be expedited by this course, and we will get through this evening.

BY THE PRESIDENT: It has been regularly moved and seconded that the resolution as read be adopted.

BY SENATOR COTTERILL: I am not going to particularly oppose this. It may be the best method of disposing of this matter, but I want to say at this time it is my contention, at least, that the more deliberate and better way to deal with this matter would be to consider this what it is, in the nature of a jury as well as judges. We can, at the conclusion of the argument, do just as a jury would; we could close the doors, if you please, with just the stenographers who keep a record of all of this, and if you choose, with the representatives of the press

present, all under a pledge of honor never to give out what transpired until the votes are taken. Then we could carefully deliberate, discuss the matters that have been before us, and then come to a vote. Interest in this matter has gone on for weeks and months, and in the final disposition of the matter we might well afford ourselves, after this closing, an opportunity to deliberate.

BY SENATOR ALLEN: I desire to call attention of the Senate to the fact that this body is sitting in no sense as a jury. It is not necessary for this body to arrive at a unanimous verdict, and furthermore I do not think it is good judgment or good taste for this body to engage in deliberations and speeches tending to change the mind of any man whose mind has been made up by argument. For myself, I have refrained from the inception of this trial to get any member of this body or any person to change his mind, and I believe it would be unwise and unjust for us at this time to enter into a general discussion for the sole purpose of endeavoring to change some senator's mind. We have had arguments on the law and the evidence from the start to the close—we will have had at the close—from counsel on both sides. We have heard the evidence and the arguments on the law. Our minds should be made up and we should certainly not endeavor to influence any other member in the making up of his mind.

BY SENATOR BOOTH: Senator Allen has made the remarks that I intended to make. If we pursue the course that Senator Cotterill has suggested, we would have a regular pow-wow and an acrimonious discussion, and I do not believe we should have endless deliberation, and I think we should proceed with the court, and when the time comes for the roll call to enter these explanations in this manner without argument, for at best it would be a waste of time.

BY SENATOR MYERS: I believe that the better way to do this is to follow the rules prescribed here, which read that the clerk shall proceed as follows: by asking each senator, "Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offence charged in this article?" Each senator shall thereupon answer 'Guilty or 'Not guilty,' and his vote shall be so recorded, and in addition he may have entered upon the record an explanation of his vote."

BY SENATOR ROSENHAUPT: I want my mind changed if I am wrong, and I think that every senator would gladly and willingly have his mind changed under the same circumstances. It seems to me this is a deliberative body in the highest sense, and that we have a perfect right to deliberate upon any question, and the senators should not be precluded from presenting their views upon this matter.

BY THE PRESIDENT: As many as are in favor of this resolution will please arise and stand until counted.

BY SENATOR PRESBY: Is there not a substitute?

BY THE PRESIDENT: There is no substitute. The question is on the motion of Senator Allen. Shall the resolution just read be adopted?

BY SENATOR PRESBY: Before this vote is taken—I understand that

Senator Allen's resolution contemplates our reason shall be reduced to writing and filed with the secretary.

BY THE SECRETARY: Read by the secretary before the vote is taken.

BY SENATOR PRESBY: Before the vote is announced?

BY THE PRESIDENT: Before the vote is taken. The secretary will read the resolution again.

*[Resolution read again.]*

BY SENATOR PRESBY: Now, Mr. President, while personally I would be entirely willing to enter into a discussion that, if it might not result in an acrimonious debate here, might not add to the deliberations, but I think when we come to vote that the members should have the privilege before the vote is announced of announcing before his vote, at that time declaring shortly and briefly, either orally or in a written statement, his reasons for his way of voting. As I understand the resolution, before we can take the vote upon any of the articles we must file with the clerk of this court—the secretary of the Senate—our reasons for our vote on all the articles. That is a reasonable interpretation of that rule. It seems to me that at the time a senator casts his vote, if he does not do it orally, his explanation should immediately follow his vote, and not precede it, and that the explanation of any vote should be made at the time of voting on any particular article of the articles of impeachment. Now, I think the resolution could be construed, and I think it will be construed, to require us to place upon the secretary's desk, before the vote is taken, our reasons for all of our votes on all of the articles.

BY SENATOR ALLEN: I do not think any such a construction could be reached. It was not intended. Before any particular article is balloted upon the resolution referring to that particular article should be read. I call the senator's attention to the fact that it is customary for an explanation to precede a vote. The senator never in his life explained his vote after voting.

BY SENATOR EASTHAM: I am with the senator from Klickitat in so far as an opportunity being afforded each senator to explain his vote if he desires so to do, and the time to explain his vote is at the time that he votes. It would be utterly impossible for a man to sit here and write an explanation of his vote and send it to the secretary on each article as it came up. They may not come in the regular order and they may. I do not know the regular course. I do not know, of course, in what manner they will come up, and I will move to amend that resolution by permitting each senator at the time his vote is cast to offer an explanation of the same, not exceeding five minutes' time.

BY SENATOR ROSENHAUPT: I will second that motion, if Senator Eastham will permit the amendment not to exceed two minutes.

BY SENATOR EASTHAM: I accept the amendment.

BY SENATOR ROSENHAUPT: I second the motion.

BY THE PRESIDENT: It is regularly moved and seconded that the resolution be amended to read that the privilege be given each senator

to explain his vote when his name is called, the time not to exceed two minutes.

BY SENATOR FALCONER: I rise to a point of order. It seems to me the gentleman is not talking to the question.

BY THE PRESIDENT: The chair will hold that the gentleman is talking to the question.

BY SENATOR COTTERILL: I am satisfied we are getting this matter into deeper water and worse confusion, but in the effort to accomplish this last amendment—the motion—it would tend towards injustice. I must say that in making the suggestion I made it was without making any motion. I made it not merely on my opinion, but from some study of the proceedings in similar cases to that which we now have in hand. I have, for instance, found that in the state Senate of Minnesota, that the impeachment of Judge Cox—

BY SENATOR COTTERILL: —after spending half a day in discussing how they should go about this very matter that we are now discussing, they decided that the best method was as I have indicated in my first remarks. Now, Mr. President, do we want to proceed as indicated in this last substitute motion and the amendment offered by the senator from Clarke that the explanations should only be given as the names were called in the roll call, and would be limited to two minutes. In the first place, the men that are away down upon the roll call would not have the benefit of—possibly they would not care to have it—the benefit of those who may explain higher in the roll call. If these explanations have any purpose or meaning whatsoever, they are for the purpose of leading us to a wise and just and fair verdict upon these important matters that are before us, and every member has the right to have them before the vote is taken upon that particular article. In this discussion that took place in the Minnesota incident, reference was made to the Judge Barnard case in New York, presided over by the chief justice of the state, where this matter was again thoroughly threshed out, and where the chief justice said that to merely enter the opinions of the judges as the vote was taken or upon the result afterwards was not part of a proper judgment; that these opinions should be given before the vote was taken, and personally I believe it is the best method to pursue to have a fair, frank discussion, and I trust and I feel confident that no acrimonious discussion at all will result, but that it would be the wisest plan and would meet the ends of justice, but if you do not agree to that plan, I still maintain that you should not adopt this substitute, that as the names are called the explanations should not take more than two minutes. If we are going to apply any manner of gag law in this matter, let us at least have it in the manner indicated by the resolution of Senator Allen, which would at least have the merit of giving the members an opportunity to prepare and put in some record shape their judgments, and have it read before the vote is called and put upon the record.

BY SENATOR PAULHAMUS: I would suggest that we permit the assistant attorney general to go on with his argument.

BY THE PRESIDENT: The chair was about to state to the Senate what the senator from Pierce has just suggested—that in justice to the assistant attorney general he should be allowed to proceed at this time. I can see where this is an important thing that should be decided, but I think that in justice to Mr. Lee we should not go into this discussion at any greater length at this time, and I hope the senators will permit this to go over until Mr. Lee is through with his argument.

BY SENATOR STEVENSON: I am going to move that further consideration of this matter be deferred until after the conclusion of the argument by Mr. Lee.

BY THE PRESIDENT: Unanimous consent is given.

BY MR. LEE: *Mr. President and Gentlemen of the Senate:* A long and protracted impeachment trial is drawing to a close. It is unnecessary for me to say that the duty has been an unpleasant one to perform, both on the part of the board of managers and not doubt on the part of counsel for respondent. It is a disagreeable task at best to prosecute a superior officer of the state, alleging that he has prostituted the high trust reposed in him.

At the outset of this argument I desire to state that the board of managers are not here voluntarily; they came into this case because the House of Representatives authorized and selected them to manage this trial. Furthermore, the attorney general's office is not in this impeachment trial voluntarily, but under and by virtue of the authority of the House of Representatives. Under that same authority the attorney general's office was called in to assist the legislative investigating committee. It is unnecessary for me to state that the attorney general's office has no ill will or bears no malice toward this respondent. We are here to perform a sworn duty as officers of the State of Washington, just as you, as senators of the State of Washington, are here to perform your sworn duty. At the outset of this impeachment trial counsel for respondent saw fit to indulge in many personalities and insinuations, but it was gratifying to note that as the trial progressed and the case assumed the dignity of an impeachment trial these tactics by counsel for respondent were abandoned. He realized, just as we did, that we were not in a political forum, but that we were standing before and presenting a case to the highest tribunal in the State of Washington, a court of exclusive, original and final jurisdiction. As the case drew to a close it was also gratifying to note the complimentary references on the part of respondent's counsel to the conduct and management of the trial and to the patience of the Senate in listening to the great volume of testimony.

Before entering into a discussion of the evidence and attempting to review some of the positions taken by respondent in this case, and before this Senate passes judgment and renders a verdict, it will not be amiss to briefly review the history of this impeachment trial. Such a review is permissible at this time, owing to the character of this case and the origin and development of the same. I assure you, senators, that I am not going to consume your time in any prolonged



argument or discussion as to the history of this impeachment, but I desire to challenge your attention to a few things in connection therewith which have been omitted by counsel for respondent, either intentionally or unintentionally, and I shall then pass on to a discussion of the testimony.

Some one has stated during the progress of this trial that there had been several impeachment proceedings in this state. This is erroneous. There has only been one such proceeding in this state, and in reality that was not an impeachment trial proper. A judge of the superior court of this state was proceeded against by the joint session of the legislature in the year 1891. That proceeding, however, emanated from a legislative resolution and not from formal impeachment charges. I am safe, therefore, in saying at this time, gentlemen of the Senate, that the legislature of the State of Washington has never before been assembled as an impeachment tribunal. For the first time in the history of this state, and, I think, for the first time in the history of the Pacific coast, a state Senate has assembled to try serious impeachment charges against a superior state officer.

For a long time past the people of this commonwealth have been scandalized by the conduct of a certain public official. It is unnecessary for me to mention his name. He has been sitting before you as the respondent in this case. At this time I might say that personally I have always liked John Schively; we have always been good friends, and therefore it makes the duty all the harder for me to perform. I pay my tribute to him at this time as a genial gentleman and a man of splendid personality, but I cannot and I will not, nor will this board of managers, nor will the people of this state, condone his official misconduct and malfeasance in office. Mr. Schively has been entitled to and has received every legitimate defense known to the law. His case could not have been handled more ingeniously nor more skilfully, and for that reason the judgment which is ultimately pronounced by this tribunal will be more satisfactory because it will be pronounced with a feeling that the law and the evidence have been carefully and thoroughly presented. As I stated a moment ago, before this slight diversion, the people of this state were scandalized for a long period of years by Mr. Schively's conduct. Notwithstanding the fact that insurance companies had been robbed and that a vast amount of money had been collected and appropriated for his own personal use, counsel for respondent nevertheless contends that Mr. Schively was elected to the office of insurance commissioner of this state by a magnificent majority of 50,000. Yes, and I may say, too, that Abe Reuff and "Boss" Tweed were likewise elevated to public office, notwithstanding their past criminal records. I ask you, is election to public office any condonation of criminal conduct? The man who seeks public office may be so skillful, so clever and so adroit, such a consummate politician, as counsel claims his client in this case to be, that he could deceive the people of this state into giving him a substantial majority. I do not care if Mr. Schively was

elected by 150,000 majority, the fact nevertheless remains, gentlemen of the Senate, that he is charged before the bar of this Senate with certain impeachable offenses, and that the results of any political contest are utterly foreign and irrelevant to the issues here. By your decision in the early part of this trial, when the demurrers to certain of the articles of impeachment were either overruled or withdrawn, you determined that certain of these articles constitute a cause of action—that is to say, they constitute impeachable offenses. It now becomes your sworn duty to determine whether or not Mr. Schively is guilty of these impeachable offenses. If he is guilty under the law and the evidence, then he should be convicted and ousted from office; if not, then he should be acquitted. All other considerations, political or otherwise, are utterly foreign to the issues in this case, and can have no legitimate purpose whatever.

The scandal connected with this office, to which I have just referred, finally became so notorious that the people of this state, speaking through the public press and through the legislature, demanded that impeachment charges be preferred against this respondent. The House of Representatives of this legislature preferred such charges by a very significant vote of seventy-seven to nothing. The House had then performed its constitutional duty in preferring the charges of impeachment. The constitution wisely says that the state Senate, sitting as an impeachment tribunal, shall then try the charges. There are many good reasons for this, but time forbids a discussion of them. No doubt the constitution-makers concluded that the Senate is further removed than the House from all passion and political prejudices and could more properly listen to the law and the evidence than could any other tribunal.

When this Senate convened as an impeachment tribunal there was an ingenious attempt made by counsel for respondent to disqualify a number of senators from sitting. His purpose was very apparent. He knew that if his motion to disqualify should be sustained, there could not be an impeachment of this respondent; he knew that the constitution of this state requires a two-thirds majority of all the senators elected in order to convict. Counsel's motion was properly overruled by this Senate on the ground that, under the constitution, no Senator had the right to say to another, "You cannot sit in this case." I do not understand why counsel for respondent argued long and earnestly at the conclusion of this trial on this same question, because it had already been determined at the outset of the trial.

It occurs to me that some of you senators may be wondering what this impeachment trial means; some of you may have been swayed by the magnetic eloquence of distinguished counsel; some of you may wonder if after all this is not a malicious persecution; some of you may be thinking of the "hidden hand" which counsel mentioned, and of which I shall have something to say later; some of you may be inclined to accept counsel's statement that the whole proceeding is a farcical political game. But in this connection remember, senators, that a

public office is a public trust; remember that it is inherent in every government to control its own officers. If you remember this, and bear it in mind, then the purpose of this impeachment trial will become very clear. That is the reason for your sitting here as an impeachment tribunal, because if it was not inherent in every government, whether state or federal, to control and regulate its own officers, then I ask you, where does the power reside? At the outset of this argument I want to impress upon your minds that as representatives of the people of this state you are here at their command to perform a sworn constitutional duty. You are here not to determine a political contest, not to wreak vengeance upon any man, but to pass upon the guilt or innocence of a superior officer charged in a regular and legal manner with certain impeachable offenses.

Now, you have heard a great deal said by counsel for respondent about removal from office, branding and stigmatizing a man for life, tainting and depriving him of his citizenship. I confess that I do not know where counsel found his authority for such an argument. Later I will show you that these results will not and cannot follow a possible verdict of guilty, but, assuming that counsel's statements are accurate, I assert here and now that if there is such a disgrace to fall upon this respondent he has brought it on himself. When a man assumes a superior office of the state he knows what the salary is, he knows what the duties are, and he knows that in accepting that office he must be governed by the law and by the principles of decency and honesty. Schively apparently forgot these facts, and if a conviction follows, he can blame no one but himself. My distinguished friend has overlooked the other side—the side of the people of this state. They created the office, they paid the salary, they prescribed the duties and elected the man, and, if that man violated and betrayed his trust, should mere sentimental sympathy for the respondent defeat the people of their rights? Such sentimentality has no place in an impeachment trial or any other trial, and if such argument is to be convincing and conclusive, then I ask, what is to become of the laws of this state? I ask what will become of your impeachment courts, and what protection will the people of this state have? The people of the State of Washington have some rights, and they are here at this time asserting and insisting upon those rights. There is no other tribunal under our system of government before whom the people can come when they discover that a superior officer has prostituted his trust and has appropriated illegally, and under color of his office, a vast amount of money to his own use. If he has abused the public confidence and seriously impaired the integrity of his department by malfeasance and misconduct in office, then certainly he ought to be found guilty before an impeachment tribunal. The governor of this state cannot remove him, because he is not an appointive official. His resignation cannot be requested, because no one has the right to request it. Therefore, the only relief is before this tribunal, which is now sitting as an impeachment court. I make these preliminary state-

ments for the reason that I want to impress upon this Senate its true functions; I want to show you, if possible, that you are here not because you like or dislike this respondent, but you are here as an impartial tribunal, sitting under oath to do impartial justice according to the law and the evidence.

The verdict that you will render in this case will be a precedent. If, after listening to this testimony, you place the stamp of approval upon Schively's conduct, can you wonder if superior officers of this state hereafter point to that approval as a justification for misconduct and malfeasance? If, on the other hand, senators, you condemn that conduct as unbecoming a superior office, how far-reaching the results may be no one can at this time say. Such a condemnation by your body at this time will be a wholesome influence for good government; the results will permeate the entire northwest, and in fact the entire Pacific coast, and will in a large measure help to sustain and promote those principles of honesty and decency which are the pride and bulwark of successful democratic government.

It is a matter of common knowledge that high office too often corrupts honorable men. The experience of all ages proves this fact and this example in this state is but another evidence of it. Too often when a man is elevated by his constituency to a high position he prostitutes his public trust, is guilty of arbitrary and oppressive conduct and becomes an official tyrant, and I say to you, gentlemen, that it is a most wise and salutary provision of the constitution that when a man does these things he can be commanded to appear before a court of impeachment and be compelled to give an account of his stewardship to the people who elected him. Mr. Schively is before this impeachment tribunal today for that purpose—to give an account to the people of this state of his stewardship, and to account to them for his official conduct or misconduct of the past eight years.

With these preliminary observations, permit me for a brief time to direct your attention to the character of this impeachment trial. At the outset, counsel for respondent attempted to force the board of managers into a corner. He wanted the state to admit that in order to convict a man of an impeachable offense it must first be shown that such was an indictable offense. We resisted that contention successfully, and say to you now that if that contention had been successful great violence would have been done to the entire law and history of impeachments in this country. The question is not, has a man committed an indictable or criminal offense, but has he so conducted himself in office as to prove himself unfit, unworthy and incompetent. If so, such conduct is impeachable. Every impeachment trial in the history of the United States confirms the position that the board of managers have here taken. Furthermore the constitution of this state comes to our relief when it says that a man may not only be impeached for high crimes, misdemeanors and malfeasance in office, but that he may also be indicted and prosecuted for the same offense. The expression "high crimes and misdemeanors" means

any offense, conduct or action which involves such moral turpitude as to show a man to be unfit for public office. We contend that Mr. Schively has been guilty of extortion; that he has been guilty of violating the laws of this state and that, even though he be not guilty, technically, of a crime, certainly his moral turpitude and his official unworthiness have been established beyond the shadow of a doubt.

The law that determines your jurisdiction is the constitution. The law that regulates, prescribes and governs your proceedings is not the criminal law nor the civil law, but is the law of impeachment proceedings. Counsel finally acknowledged the correctness of that contention, although he would like to have had his client tried under the technical rules of the criminal law.

The primary inquiry, gentlemen of the Senate, and the only issue for you to decide in this case is, do these articles of impeachment show guilt or innocence on the part of this respondent? In other words, does the testimony before you establish his moral turpitude to such an extent as to convince you of his utter unfitness and unworthiness to continue as a superior officer of the state?

It would serve no good purpose at this time for me to enter into a discussion of what constitutes an impeachable offense. You are by this time thoroughly familiar with that matter. Nor would it serve any good purpose to indulge further in a more detailed discussion of the law of impeachments. That has, I take it, been sufficiently presented to you by this time. I want, however, to challenge your attention to one fact, and that is the ultimate object and purpose of an impeachment trial. After listening to counsel for respondent, some of you may conclude that a judgment of conviction would place a most awful stigma and brand upon this respondent. Some of you may feel that by that judgment of conviction he would be tainted and forever damned. In answer to this ridiculous contention I may say that counsel apparently is not acquainted with the history of impeachment trials in this country. E. St. Julien Cox, one of the ablest and brightest judges of the State of Minnesota, was impeached some years ago for drunkenness and conduct unbecoming a public official on ten different counts. After an eloquent effort in his own behalf which, in the beauty of its language, rivals that of Robert G. Ingersoll, the Senate was nevertheless unmoved, as the Senate ought to be in this case, and convicted the respondent on several different counts. The judgment of conviction disqualified him from holding office for three years. Nothing was said about tainting him or stigmatizing him or forever damning him. In fact, nothing could be said or done in that regard because it was beyond the jurisdiction of the state Senate to pronounce such a judgment. Mr. Cox, on account of his attainments, his ability and his personality, later redeemed himself and emerged into the arena of public confidence a clean, decent and upright public official. This individual instance to which I have challenged your attention utterly refutes what counsel for this respondent has stated

as to a judgment of conviction and the consequences that follow the same.

In answering counsel's contention, I assert at this time, and it is but uttering a fact which all of us know, that the sole and primary purpose of impeachment is to remove a man from office and perhaps to disqualify him from holding another office of public trust or honor. I would not mention this fact were it not for counsel's prolonged discussion and sympathetic appeal to you in behalf of this respondent. The primary purpose of this impeachment, senators, is not punishment, is not revenge, is not to deprive a man of his life or liberty or his property, but it is to determine whether or not a public official on account of his misconduct and malfeasance in office is worthy to hold that office. Shorn of all technicalities, that is all there is to it; simply to determine on behalf of the people whom you represent whether a man against whom impeachment articles are preferred has shown himself to be an honest, decent and worthy public official. The criminal courts in prosecutions impose fines or other punishments; the civil courts in civil cases fix damages; the equity courts and admiralty courts have their jurisdiction, but the impeachment courts have an exclusive, peculiar and original jurisdiction and can pronounce nothing but a political judgment. For that reason, senators, it has been wisely provided that the rules of criminal law do not obtain in cases of this character. For that reason it has been determined that in an impeachment trial the state does not have to establish a technical crime, but must only establish a man's unfitness and unworthiness to occupy a public office. The organic law of this state, to which I have referred, confirms this view. In this connection I desire to quote from the Honorable Charles Sumner, one of the ablest lawyers and statesmen that the United States has ever produced, in his written opinion filed after the trial of Andrew Johnson, president of the United States. Senator Sumner said:

An impeachment is a political proceeding before a political body, with political purposes. It is founded on political offenses and not criminal offenses; proper for the consideration of a political body and subject to a political judgment only.

This rule has been universally established, notwithstanding counsel's contention to the contrary. The object of this proceeding is not to determine whether or not Mr. Schively is guilty of the crime of extortion, but is to determine whether or not he has been guilty of such malfeasance in office as to make his continuation in that office undesirable. If you determine that this is the case, then the only judgment that you can pronounce is a political judgment.

This brief review of the law of impeachment, together with its nature and character, has been made for these purposes:

*First*—To clear your minds of many of the ambiguities and technicalities that have crept into this trial, largely due to the presentation of the respondent's case; and,

*Second*—To convince you of these propositions: That as an im-

peachment tribunal you are acting in a political capacity and not as a criminal court; that the object of impeachment is primarily protection to the state in removing an unworthy officer, and not a criminal punishment; that impeachable offenses do not necessarily have to be criminal offenses, but are those which in their nature are subversive of some fundamental or essential principle of government and highly prejudicial to the public interests, and may consist of a violation of the constitution, of law, of an oath or of an official duty, or of the abuse of discretionary power from improper motives or for improper purposes. Apply these principles of law to the facts before you, and we shall be well satisfied with your conclusion.

In connection with these articles of impeachment, it will be necessary in this concluding argument to discuss the defense to the articles, the evidence supporting them, and the law at the same time. At this time I want to consider the contention of counsel that Schively was not a public officer on the dates mentioned in the articles of impeachment. Counsel for respondent has attempted to confound this Senate by stating that Schively, at the time of the alleged offenses charged in the articles, was not an official, but merely a ministerial officer, responsible only to his chief. In this connection—and I want my senator friends out in the cloak room to hear this discussion, because it is important—I assert that Schively was in the fullest and most complete sense of the word a public official. It is indeed significant in this case that the respondent never discovered that he was but a mere employe of Mr. Nichols until these impeachment proceedings were instituted. Up to that time he wrote letters, he made representations to insurance companies, he collected insurance fees, he issued certificates, he made examinations, he issued agents' licenses, and in fact he had absolute and complete control of the insurance department of this state; he represented himself to be, and was the deputy insurance commissioner of the State of Washington. It remained for an impeachment proceeding to be brought against him and for an astute and ingenious lawyer to advise him that he was not a public official at all, and up to this time he had never discovered this astounding and alarming fact. I ask you, senators of this state, are you going to give weight to such a ridiculous defense as that? Are you going to permit this man, who has been guilty of the grossest malfeasance and corruption in office, to acquit himself on the flimsiest kind of a technicality? Are you going home to your constituents after listening to this testimony, which overwhelmingly establishes his guilt, and say that Schively is guilty according to the evidence, that he illegally collected the money and appropriated it to his own use, but he was not a public official? If so, I say that it is a great reflection upon your good judgment and your sense of honor.

Now, I am going to discuss with you briefly the law on this proposition, and believe that I can conclusively show you that Schively was a public official, and that it was not necessary for him to give bond and take an oath. The giving of the bond and the taking of the

oath seem to be the requirements which counsel insist constitute a man a public official. You have heard counsel read from Meachem on Public Offices. Now, I don't want to impugn the motives of my distinguished and learned friend, but I do want to tell this Senate that it is one of the tricks and artifices of the ingenious lawyer to read one section of a case or a text without reading that which follows or precedes. Mr. Meachem, about four or five pages following the citation of counsel, has this to say:

The most important characteristic which distinguishes office from employment or contract is that the creation and conferring of the office involves a delegation to the individual of some of the functions of government to be exercised by him for the benefit of the public.

The statutes of this state created the office of deputy insurance commissioner, providing that in the absence or inability of the insurance commissioner the duties of the office shall devolve upon the deputy. How can the duties of the office devolve upon the deputy if he is not a public official? Can the duties of a superior officer devolve upon a clerk or employee in his department? The mere fact that there is no provision in the statute for the giving of a bond or the taking of an oath is nothing more or less than a legislative oversight. It has no important significance in this case at all. It does not change the fundamental proposition that the office was created by statute; that the duties were conferred by statute and compensation provided for—

By Mr. ISRAEL: The individual removable at pleasure—

By Mr. LEE: Now, I object to counsel interrupting me.

By Mr. ISRAEL: I beg your pardon. I did not know that it annoyed you. It does not annoy me, and I did not know that it annoyed you. I will not do it again.

By Mr. LEE: As I stated before the interruption of counsel, the statute of this state names the officer, creates the position, and prescribes the duties. The statute further says that in the absence or inability of the insurance commissioner the duties, not of the insurance commissioner, but the duties of the office, shall devolve upon the deputy. Now, let us read a little further from Meachem. In section 12 of Meachem on Public Offices we find this expression:

Where an individual has been appointed or elected in the manner prescribed by law and has a designation or title given him by law to exercise functions concerning the public, assigned to him by law, he must be regarded as a public officer.

Now, applying this principle of law to the case at bar, what do we find? We find, first, appointment by law of the deputy insurance commissioner; second, his title is fixed by law; third, his compensation is prescribed by law, and, fourth, his duties concern the public. Certainly it cannot be contended by counsel or any one else that the duties of the deputy insurance commissioner do not concern the public. This is too obvious to admit of extended discussion. Counsel has claimed that the proposition of whether or not Schively was a public



officer is the vital issue and the turning point in this case, and, if it is, then the turning point turns toward conviction, because the authorities, as I will show you, are unanimous and absolute to the effect that the giving of a bond and taking of an oath are mere incidents, mere formalities at the best—

BY MR. ISRAEL: You will have to wait a moment until I object to the court. I want to say to the court that if the gentleman is going to read any laws that have not either been referred to by opening counsel or else a list of them has been handed to me before I close my argument, he is violating every known practice of every kind of a court on earth, and while I have no objection to his reading the law book, now that this counsel didn't refer to, and I have been handed no list of anything—I claim the right, should I see fit, insomuch as it disconcerts the young gentleman to ask him questions, which I will never do any more—I claim the right, under the circumstances, and I shall simply confine myself solely to it, to be afforded an opportunity before any vote is taken to comment upon this new law that he is going to read to this legislature. In doing so he is violating, and knows that he is violating, the practice of every court in the world. Never has new law been cited and read to a court or a jury without counsel who has closed for the defense has either had his attention called to it or a list of it handed to him, neither of which has been done in this case.

BY MR. LEE: Now, if they want to hear the true law they can hear it here, and if they don't I will stop reading it. I want to say that I am surprised that a man who has practiced before the courts of this state for thirty years, and claiming to be so renowned in the law, makes an assertion to the president of this Senate that a man in closing a legal argument cannot produce other authorities to rebut what has been presented in the answering argument. Mr. President, it is an astounding proposition, and never before have I heard it advanced in a court of any jurisdiction whatever. Why, it is elementary that when counsel in his answering argument cites certain authorities we can either analyze the same authorities and discuss them, or we can analyze and cite other authorities to rebut and answer them.

BY MR. ISRAEL: Now, the gentleman has learned something today that he has never known in his life before—

BY MR. LEE: I object to counsel interrupting me—

BY MR. ISRAEL: I yet claim that when counsel are going to use other authorities to combat authorities read it is their duty to furnish a list of the authorities to counsel that is closing.

BY MR. LEE: I will go ahead with this argument until I am stopped by the president—

BY THE PRESIDENT: The chair will settle this and not rule on it at this time. I will confer with Senators Rosenhaupt and Presby.

BY MR. LEE: Before interruption I was reading to you the law concerning public offices, and I want at this time to give you the true

law, and if Mr. Israel does not want to hear it he can retire to the outside. No wonder it does not sound good to him. No wonder it hurts, because he knows and we all know that John Schively was a public official, and that his argument in this case is little short of nonsensical.

The testimony in this case shows that Mr. Schively represented himself to be and was deputy insurance commissioner and that he governed the entire department as the law provided, and in some cases as the law did not provide. Counsel has apparently overlooked the case found in 39 New Jersey Equity, page 127, where this very proposition was under discussion. The New Jersey equity court is known throughout the length and breadth of this country as one of the best of our courts. The court says:

It was intended that the clerk of each of the counties of this state might appoint an assistant in his office, to be known as his deputy clerk, and to give such deputy power during the absence or inability of the clerk to exercise all of his powers and perform all of his duties.

This case is exactly in point, because it shows that the powers conferred by that statute were identically the same as the powers conferred by the statute in question here. The court further says:

Deputy clerks are public officers. The law constitutes them public officers and gives them certain powers. It does not establish any particular period of service for them; that is left to private agreement.

The New Jersey case supports the proposition laid down by Meachem, to which I have made reference. In other words, if the statute gives a man a title, fixes his compensation, prescribes his duties and invests him with a portion of the sovereign power to exercise, then he is conclusively a public officer.

In the case of Clark against Spooner, 66 North Carolina 63, Mr. Chief Justice Pearson says:

A public office is an agency for the state, and the person whose duty it is to perform this agency is a public officer. This is considered to be the true definition of a public officer in the original sense. The essence of it is the doing of some act or acts or series of acts for the state. Public officers are usually required to take an oath, and usually a salary or fees are annexed to the office, in which case it is an office coupled with an interest, but the oath and the salary are mere incidents, and constitute no part of the office.

This expression of the law from such an eminent source confirms the contention advanced by me a short time ago, that the giving of a bond and the taking of an oath are mere incidents and have nothing to do with the character of the office.

The supreme court of Ohio, in 7th Ohio State, 556, states the law as follows:

Do the powers and duties devolved upon the defendants by the sections of the acts above quoted constitute them officers or not? What is an office? Webster defines the word, "To signify a particular duty, charge or trust conferred by public authority and for a public purpose."

In the case in 20 John Reports, 392, the judge delivering the opinion of the court defines the legal meaning of the word to be, "An employment on behalf of the government in any station of public trust, not merely transient, occasional or incidental." If we accept either or both of these definitions as substantially correct, it is clear to our minds that these statutes are held valid and these defendants officers; theirs is a public duty, charge and trust conferred by public authority for public purposes.

In the 33d Georgia, 336, you will find this expression of the law, in line with that above quoted, and absolutely annihilating the contention of counsel here that in order to make a man a public officer he must take an oath and give a bond:

The position, place or office, whatever be its proper designation, was created by a public law. What is an office? It is defined to be that function by virtue of which a man hath some employment in the affairs of another. Certainly where an individual has been appointed or elected in the manner prescribed by law, has a designation or title given him by law and exercises functions concerning the public assigned to him by law, he must be regarded as a public officer.

Now let us apply this law to the facts in this case. Schively was appointed as prescribed by statute, had a designation or title given him by statute, his compensation was fixed by statute, and he had public functions to perform. Certainly he was a public officer and anything but a mere ministerial officer.

BY THE PRESIDENT: We can allow Mr. Israel to close on this new law that you are reading, but you will have to refrain from introducing any new text books or law that has not been submitted to Mr. Israel. You will, of course, be permitted to refute his arguments.

BY MR. ISRAEL: All I want in the world, gentlemen, and all I ask—I don't want to make any argument—I simply want when he gets through to show from the cases themselves that they have no application to the rule; that in each one of them something else was under discussion. Now, this last one picked up here, the 66th Georgia—

BY MR. LEE: I object to any argument by counsel at this time, and I object to being interrupted any further.

BY THE PRESIDENT: Now, just wait a moment. I interrupted you at this time. We will take a recess for ten minutes.

[*Recess.*]

BY THE PRESIDENT: Mr. Lee will be permitted to cite each and every authority of this case that he desires, and in this one instance Mr. Israel will be allowed to analyze them immediately after Mr. Lee closes on this subject.

BY MR. LEE: I have a number of authorities here to present on this proposition which conclusively and finally establish our contention, but I do not want to consume the time of this Senate with the

citation of but one or two other authorities. Meachem, on page 14 of Public Officers, in continuing his discussion, says:

A clerk in the office of the assistant treasurer of the United States, appointed by the assistant treasurer with the approbation of the secretary of the treasury, pursuant to law, and whose compensation is fixed by law and whose duties are continuing and permanent, is a public officer.

Mr. Throop, and counsel will not contend that Mr. Throop is not an eminent authority, says this in this connection:

In considering the question whether a particular officer is a public officer, the question of the territorial limits within which his functions are exercised is immaterial. If the office is one in which the public has an interest, it is a public office, however narrow may be such territorial limits.

Now, I call your attention particularly to the next expression:

Nor is the existence or absence of any emoluments or of the requirement of an official oath, or the permanent or transient character of the duties a certain test to determine whether the person is or is not a public officer. It was held in Pennsylvania that a person appointed by the governor, pursuant to a joint resolution of the legislature, a special agent of the state to collect certain claims of the state against the United States, and he was not required to take and did not take an official oath, was a public officer.

Now, senators, inasmuch as the privilege has been extended to counsel to analyze these authorities, before he does so, bear in mind in connection with the same what I have said and the fact that Schively represented himself to be deputy insurance commissioner, and had complete and absolute control of that department. Suppose he had taken an oath or given a bond, would that in any way have changed his duties, his designation or his compensation. Certainly not.

Complying with the rule of the chair, I will at this time allow counsel to analyze these decisions, as he seems anxious to do it.

By MR. ISRAEL: I was expecting something of this kind when I was closing, from that array of books, when I gave to the Senate the law. Finding whether the law was applicable to the particular case, you want to first find out what the court had under discussion when he made a statement of the law.

Now then, not to make any argument, simply to back my statement from Meachem as I read it to you, after the statement "Who are public officers," etc., follows: "Purpose of this Chapter; Assessors, Attorneys at Law, Attendants upon Courts," etc. The article on clerks, being the one read by the gentleman, is relative to a clerk in the office of the assistant treasurer of the United States. Meachem sums it all up in the paragraph entitled "Deputies":

Whether deputies appointed by public officers may be regarded as public officers themselves depends upon the circumstances and method of their appointment. When such appointment is provided for by law, and *a fortiori*, where it is required by law, which fixes the powers and duties of such deputies, and where such deputies are required to take the oath of office, to give bonds for the performance of their duties,

the deputies are usually regarded as public officers. Thus deputy roadmasters, appointed and qualified according to law, are public officers. So a deputy marshal is an officer of the United States, and deputy sheriffs are recognized by the statutes of most states as independent public officers. But where the deputy is appointed merely at the will and pleasure of his principal, to serve some purpose of the latter, he is not a public officer, but a mere servant or agent. So a special deputy employed only in a particular case is not a public officer.

Now, you will notice the absence in the reading of these cases of many of the arguments of counsel, and I seem to disconcert him by asking the question if an individual removable at the will of a superior officer was a public officer? He doesn't answer that in his argument, I notice. Then, he is an employee and not an officer. Now then, I think this first case, this 66th North Carolina—the gentleman has read it and he read you this section:

A public office is an agency for the state, and the person whose duty it is to perform this agency is a public officer. This we consider to be the true definition of a public officer in its original broad sense; the assence of it is, the duty of performing an agency—that is, of doing some act or acts or series of acts for the state. Public officers are usually required to take an oath and usually a salary or fees are annexed to the office, in which case it is an office, "coupled with an interest," but the oath and salary or fees are mere incidents and constitute no part of the office.

Now, let's see what the court had under discussion when the court decided that case—get back into the case and find the facts. This was an action in the nature of a *quo warranto* against certain persons whom the governor had appointed under an act of the legislature to constitute a board. And in their answer they insisted that they were directors of the A. & N. C. Railroad Company; that they claimed to hold the same under the provision of the charter authorizing and empowering the president and speaker of the House of Representatives to appoint proxies and directors on the part of the state in all corporations in which the state had an interest; that they claimed to hold the same under the provisions of the charter and the law of the land, authorizing and empowering the governor of the state to appoint directors, etc.; that the governor had issued commissions to a number of the defendants as directors on the part of the state, and that the others had been legally and properly elected at a meeting of the stockholders under the provisions of the charter of the company. They denied the right of the plaintiffs under the appointment made by the president of the Senate and the speaker of the House of Representatives; that the acts of a general assembly which conferred this power upon them was unconstitutional. Now, this court was speaking of the character of these directors appointed by the governor, under the act of the legislature, and commissioned by the governor and their names written in their commission as to whether they were officers or not; and the court in saying they were officers used the language: "A public office is an agency for the state, and the person whose duty it is to perform this agency is a public officer, and the

public officers are usually required to take an oath, in which case it is an office." But that the oath and salary or fees are mere incidents and constitute no part of the office were questions the court didn't have under consideration, nor have thought of, because it didn't occur in that case that they held their office at the will of any individual; that they could be turned out any minute and some one else put in their place. That is the test. It is true that the oath and bond are incidents, but if a man is under oath, and is under bond to the state, that alone would establish that he was an officer, but if he wasn't under oath and under bond, there is yet another test: How can you get rid of him? And in this case, that was not in the mind of the court, had no application; no question of deputyship here. Here was a question as to whether certain persons commissioned by the governor as a board of directors were officers. And the court said they were, using this language in defining an officer. And that is all there is in the 66th North Carolina to meet this statement of Meachem that the test is to the right of removal, and that is the test finally, the final test as to whether a deputy is an officer, or an employee, and that is all there is to that case. Now then, we will take up the 7th Ohio State 556, cited by counsel. This is the part he read:

Do the powers and duties devolved upon the defendants by the sections of the acts above quoted constitute them officers or not? What is an office? Among lexicographers, Webster defines the word to signify "A particular duty, charge or trust, conferred by public authority for a public purpose." In a case in 20th John, R. E. P. 492, Platt, J., delivering the opinion of the court, defines the legal meaning of the word to be "An employment on and in behalf of the government, in any station of public trust, not merely transient, occasional or incidental." If we accept either or both of these definitions as substantially correct, it is clear to our minds that if these statutes are held valid, the defendants are officers. Theirs is a public duty, charge and trust, conferred by public authority, for public purposes of a very weighty and important character. Their duties, their charge and trust is not transient, occasional or incidental, but durable, permanent and continuous; but, it is said, the acts referred to prescribe no oath of office, and it is thence inferred that the defendants cannot be officers. To this it may be replied that the constitution does prescribe an oath of office, and that its injunctions are as obligatory as those of a statute could be. At all events, the utmost that such omission can effect is to show an instance of legislative neglect or oversight. That the defendants ought to have taken an oath of office before entering upon official duty is clear.

Now then, what was the court talking about? How did they use this expression? Were they making a statement as between a deputy and employee? Why, no. Let's get back to the beginning of the decision, just above read:

But employed in reference to matters pertaining to government, or the distribution of powers of government, it means the power of appointment to office—the power to select and indicate by name individuals to hold office, and to discharge the duties and exercise the powers of officers.

Here was a case where the question was whether a certain named and appointed individual to an office, where no bonds were required, was an officer, because he hadn't given a bond, where there was a section to name the individual. No thought of the question in this court, mind, of the distinction between a deputy and employee. Not the question under consideration by the court. No such distinction as that could be made in the case determining that a man was an officer who had been named to a duty by the state, although not required to give bond, and that is all there is in that case.

Now, we will take up the 33d Georgia, and this is the case back in war days. Here was a case of voting away from home, and the question came up— Well I had better read the syllabi; it will give us a quicker insight into the facts:

By the act of 1856, the election of county treasurer of Muscogee county is required to be certified and returned to the executive department. An individual who has been appointed or elected in the manner prescribed by law, who has a designation or title given him by law, and who exercises functions concerning the public, assigned to him by law, is a public officer. The county clerk of Muscogee county is an officer of that county.

That is the syllabi of what the gentleman read from this decision.

Now, this man was claiming in this proceeding not to be a deputy, or that he was an officer by reason of a deputyship, but he was claiming that he was county treasurer of the county, entitled to the office of county treasurer—not to a deputyship—and in deciding that question the court used the language the gentleman read in connection with other language; and now I will read it all:

Certainly, where an individual has been appointed or elected in a manner prescribed by law, has a designation or title given him by law, and exercises functions concerning the public, assigned to him by law, he must be regarded as a public officer.

And there counsel stops.

It can make no difference whether he be commissioned by the chief executive officer, with the authentication of the seal of the state or not. Where that is given, it is but evidence of his title to the office. This evidence may in some cases be greater and in others of less solemnity. We hold, therefore, that a county treasurer is an officer of the county for which he is appointed or elected.

Now, that is what they decided as to whether that county treasurer was an officer or not, and that is cited here as an authority to sustain the contention that a deputy, not under bond or oath, and removable at pleasure, and who is not named by law and has no particular interim for any term of office, is a deputy and not an employee. It don't touch side, edge nor bottom of the question you are discussing. And that's all there is to that.

Throop on Public Officers is good work. What is the gentleman reading from when he said:

Nor is the existence or absence of any emoluments or of the requirement of an official oath, or the permanent or transient character of

the duties, a certain test to determine whether the person is or is not a public officer.

No doubt it is a certain test, but the question of removability is a certain test, and what is Throop talking about—which was not read to you:

Territorial limits of the office; emoluments; official oath; permanent or transient character of duty in an officer.

—Under the head of "Servants and Officers." He isn't discussing the question at all between a deputy and an employee, and when a deputy is an officer, because the rule is all the time, as was laid down by Meachem, that the test is bond, oath, and removability. You may take out bond and you may take out removability, but you have got to take out removability before you raise the employee to the dignity of an officer. As long as he is employed by the individual and not by the state, and can be impeached and discharged by the individual and not by the state, he is an employee and not an officer; and you can't raise the employee to the dignity of an officer. Not discussing the question at bar at all; not discussing the question of deputyship at all.

Now, here is this New Jersey case. It is all along here. I have not time to read it all. I have just gotten what he says:

It appears that in this case the deputy clerk resigned his office ten days before the approval of the act of 1882, and was reappointed two days after its approval, and it is urged that the act is not within the constitutional prohibition, because it neither created nor increased his compensation during the term for which he was appointed. This claim has already been disposed of. He had no term within the meaning of the word in the prohibitory provision. The act is unconstitutional.

Then, in discussing this case, the question as whether or not clerks were officers, it appears that here was an attempt in this legislature the same as there has been in our own once or twice—to increase salaries—and this fellow, conceiving himself to be an officer, resigned and then was reappointed, and the court disposed of the case, not passing upon the question of whether as deputy he was an employee or officer; but they held that the law itself was unconstitutional, and that disposed of that case, and that was the point the case went on. No discussion in that case of deputy or principal; no discussion of employee as distinguished from officer. No application to the case at bar. Now, I have no argument to make. I simply wanted time to show that that which I have been accused of was actually perpetrated—reading portions of decisions that contain language that seems to decide something claimed for, when an analysis of the whole case shows that the point in this case was not under discussion. I thank you, gentlemen. I will agree not to offend any more.

By Mr. LEF: *Mr. President and Gentlemen of the Senate*—We have been treated to an amusing exhibition. Counsel can slam a book shut and throw it down on the table, but he cannot by such action change the law as decided by the best courts of this Union. His anxiety and



solicitude manifested in this important matter is explainable on no other ground than that he sees his defense rapidly weakening. One of the best courts, as I told you, in the United States is the New Jersey equity court. They take occasion in the citation that I read to you to lay down the true and proper definition of what constitutes a public officer. Apparently their definition and their explanation does not suit counsel for respondent. I am not going to burden you with additional authorities, nor am I going to linger longer on this subject, because I want to discuss some of the important testimony in this case, which ought to be absolutely and finally conclusive of the case. Then I want to entertain you for a time with the most interesting cross-examination of Mr. Schively, upon which cross-examination alone I will be willing to rest this case.

In passing, then, and by way of recapitulation, we assert that Mr. Schively was a public official; that his office was created by statute; that his compensation was provided by statute, and that his various duties and privileges were determined by statute. The mere fact that he did not take an oath or give a bond is absolutely immaterial. It in no way changed the character of his office and did not make him any less a public official. Schively did all that his chief could do, and in fact had absolute control of the insurance department. If, therefore, counsel is willing to rest his case on this proposition, then certainly we are, because the law and the facts are with us.

Coming now to the analysis of the testimony, I desire to consider that relating to article 2. According to the testimony introduced here, it seems that a departmental policy had grown up, and Mr. Schively was careful to say in his testimony upon this article that everything was done under the departmental policy. What this high-sounding phrase means nobody knows, and it no doubt was invented after this impeachment trial commenced. Prior to that time no one in this state had ever heard of a "departmental policy," in the insurance department unless it was the departmental policy of collecting and appropriating a large amount of money for private purpose. Mr. Schively says that a custom had grown up of charging a certain amount when insurance companies entered the state. The testimony shows that Schively and Nichols made frequent trips to the east. Schively testifies that as early as 1901, or five years before John D. Atkinson, the attorney general, came into office, the insurance department made a flat rate fee of \$200.00 for the entrance of an insurance company. They make frequent trips to the east and they pro-rate the charges and they continue that practice, according to Mr. Schively, until Attorney General Atkinson comes into office, and then they want to legalize the custom. I brand this defense here and now as one of the flimsiest, most ridiculous and most preposterous that was ever presented to an intelligent body of men. They say that this fee was collected to keep out "wildcat" companies; that if the "wildcat" companies were charged \$235.00 it would tend to discourage them, when everybody under the shining sun knows that a "wildcat" company

would want nothing better than to pay \$235.00 and enter this state. Such companies well knew that when they had paid this amount into the jack pot of the insurance department they would never be examined. Mr. Schively knew, and the "wildcat" companies knew, that this was in the nature of a bribe, and that they could do business in this state for two or three years and either go defunct or withdraw, and I will show you later by the testimony that this is exactly what occurred.

Now, that is the character of defense, gentlemen of this Senate, that was interposed to article 2. The testimony concerning article 2, as you will remember, was to the effect that Mr. Lebo entered the office of Schively at Olympia and wanted to admit two insurance companies. Mr. Lebo was young, and apparently extremely innocent. Mr. Schively looked upon the lad as "choice picking," and said to him that he would have to pay \$470.00 for the two companies. Mr. Lebo replied, "I haven't got the money"; and Schively said, "You can pay what you can now and the balance later." Gentlemen of the Senate, this sounds like admitting insurance companies on the installment plan—\$100.00 down and the balance later. I want to ask you, as senators of this state, sitting here to perform your sworn duty, what right had the insurance commissioner of this state or the deputy insurance commissioner of this state to allow companies to enter the State of Washington on the installment plan? Is not the insurance department of this state supposed to administer the insurance laws impartially and equally to all? The statute says that the insurance companies seeking admission shall pay an entrance fee of \$35.00—nothing more, nothing less. Apparently the insurance department of this state, which was Mr. Schively, was not very familiar with this statute. Lebo paid \$135 for one company and \$35 for another and received receipts for the money. Later the companies represented by Lebo withdrew from the state. Prior to the withdrawal Mr. Lebo wrote to Mr. Schively and said, "I cannot pay you the money now, but I will pay you later," and Schively, in a charitable and magnanimous manner, writes back, "You don't need to worry about this money at all; you can pay when you get ready." Does that seem to you to be enforcing the insurance laws of this state? When the companies withdrew from the state Lebo asked for the return of his money. He had to consult an attorney before he could get his money, and then it took a considerable time. No wonder Schively didn't want to return it—because it was "easy money."

Now, gentlemen, if my denunciation of Mr. Schively is scathing, I want to say that the facts justify it. I want to ask you, as men of honor and integrity and senators of the State of Washington, if such conduct was not only disreputable and reprehensible, but if it was not criminal. Assuming that it was not criminal, for the sake of argument, it certainly completely and conclusively establishes the grossest malfeasance in office. No, Schively didn't want to return the money; he only did so when suit was threatened. Before returning the illegal fees, however, Schively was shrewd enough to ask for a return of the

receipt, as the testimony shows, and Lebo was shrewd enough to keep a photographic copy of the receipt, to show the amount of money that he had paid. Schively says in connection with this article that he intended to make a final examination some time in the future—in the dim and distant future—and that examination is still to occur, but nobody knows when. This is another defense, senators, that was evolved and invented at the time this impeachment trial occurred, because up to that time none of these companies had ever been advised that they would some time in the near or distant future be examined by the insurance department of this state.

Now, let us see about this defense that the examination is to occur in the future. The statutes of the state provide that before a company shall be admitted the insurance commissioner or his deputy shall be satisfied that certain conditions exist. Now, I want to ask what was the insurance commissioner or his deputy paid for if not to follow out and enforce this statute and ascertain prior to admission the true condition of companies seeking admission? By his own testimony Schively admits that he often made inquiries, and could find out the condition of some companies, because he said he often consulted Best's Manual. Then why didn't he consult Best's Manual in the case of the Lebo companies? Why didn't he make such inquiries as to satisfy himself that the companies were in proper condition before admitting them? No; rather than do this he preferred to take a long chance and to extort from each and every company a nice, large, fat entrance fee of \$235.00. That was the interpretation and the construction that Schively placed upon this statute, which is plain enough for a school boy to read and interpret. Mr. Schively in his receipt to Lebo stated that this money was received for "Verification of Report." I asked Schively on cross-examination what was the difference between "Verification of Report" and "Official Examination," and he said that they were synonymous terms. My version of this affair and this testimony is that when the \$235.00 was received Schively simply receipted for it as "Verification of Report" and never expected and never intended to examine the company. If that is not moral turpitude sufficiently great to show his unworthiness to hold office, then it is hard to understand what the expression "moral turpitude" means. We have gone back a number of years in this testimony to show the collection of this advance fee. We have shown you that this illegal and unwarranted fee was extorted up to and including the time that Schively assumed his present office, which shows that there was a continuous practice and system in the collection of these illegal fees.

In answer and reply to the contention of respondent in this case, that the examinations of these insurance companies will some day occur, I say that if the legislative investigating committee had not stirred up this thing at this session of the legislature and thereafter that this practice would undoubtedly have continued and that the insurance companies would continue to be fleeced. Counsel for respondent says that there is no crime shown in article 2 and that in

this, as in other articles, there is an absence of corrupt intent. Counsel well knows that there are some cases in their very nature which imply a corrupt intent, and I submit to you that that is the case here. Schively was a public official, and we have shown that he was one, was supposed to be familiar with the statutes of this state governing his department, and was supposed to be familiar with the fees he should receive. If he received a larger or greater fee than that authorized by statute, certainly corruption would be necessarily implied; especially so, gentlemen of the Senate, when the testimony of Mr. Schively himself shows that he later converted these fees to his own personal use. If that fact does not show corrupt intent sufficient to complete the crime, then I say that there is no such thing as a corrupt intent. I dislike to say it, but it certainly approaches larceny or embezzlement.

You are familiar with the contents of article 3, and I will not read the article. In that article it is alleged that the Boston Insurance Company was admitted upon the payment of \$135.00 entrance fee. Here we have a nice example of the sliding scale. Schively admits the Lebo companies for \$235.00 each, and, wanting to exercise some charity to the Boston Insurance Company, which, by the way, has a paid up capital stock of one million dollars, says to them, "You can come in for \$135.00." Has the Boston Insurance Company ever been examined? The testimony in this case shows that it has not. The inquiry naturally arises if this \$100.00 was received several years ago for the examination of an entrance company, why has not that company been examined? The respondent, in his testimony, replies that he was too busy. He says that Sam Nichols would not allow it, and yet Mr. Schively had time to assume charge of the Pacific Live Stock Association; he had time to go to Portland as an expert and receive money as an expert; he had time to go to Walla Walla as an expert; he had time to go to the Masonic convention; he had time to go to an Elks' convention in Denver, and he had an opportunity, too, to be a good fellow, and I will say for him in passing that he was a good fellow, but a mighty poor official. How does that kind of a defense appeal to you? That he took the money; that he appropriated it to his own use; that several years have elapsed; that he has been sporting around the country and yet has not had time to make the examination. He admits in his own testimony on cross-examination that this very same money that he took from the Boston Insurance Company and others has been spent for his own personal use. According to the criminal statutes of this state, that constitutes embezzlement.

As cruel and harsh as some of these things may seem, they conform strictly to the testimony in this case, and I say to you that they ought not to be tolerated and condoned and no man ought to be retained in public office who indulges in such practices.

In connection with the testimony concerning article 4, there is a very significant circumstance. The last biennial report of Mr. Schively, as deputy insurance commissioner, shows that the Capital Life Insur-

ance Company, of Colorado, withdrew from this state in February, 1907, over two years ago. This same company paid to Mr. Schively upon its admission to this state an entrance fee of \$235.00. I ask, has any examination been made, and the answer is, no. I ask, has the money been returned and the answer is, no. I ask if the money has been kept as a trust fund and the answer is, no. Has this respondent or respondent's counsel told you what became of this money? The only reply from Mr. Schively himself, on cross-examination, is when he states that the money has been appropriated to his own personal use. They reply by way of defense to this article that the examination of this company is to be made. How can the Capital Life Insurance Company, of Colorado, be examined and what would be the purpose of the examination, and what would be the authority to examine it after it has withdrawn from the state? It would be absolutely futile and useless. Apparently, when ingenious counsel for defense interposed the defense that the examination would occur in the future, he did not have in mind that some of these companies had withdrawn from the state and could not, therefore, be examined. Senators, if Mr. Schively as deputy insurance commissioner had kept this and other amounts as a trust fund, and had manifested a reasonable disposition to make these examinations, and at some later date had made them, his moral turpitude would perhaps not be so great, but where the money has been collected, the examination has never been made and the company has withdrawn from the state, then the appropriation of that money constitutes the most reprehensible conduct of which a public official could be guilty. The defense to this article, as shown by the testimony, and the other articles here, as shown by Mr. Schively's cross-examination, is, "I collected the money; I expected to make the examinations; I expect yet to make the examinations, but I have spent the money for my own personal uses." Does that character of testimony appeal to you as men of honor and integrity? Would you under similar circumstances conduct the insurance department of this state in the manner that he has? Would you let your private and business affairs be handled in that way? If you gave an employee a certain amount of money to use for a certain purpose, and in a certain way, and he took and appropriated it, stating that he expected to employ the money for the proper purposes some time in the future, you would undoubtedly, and most properly, discharge him immediately and prosecute him for embezzlement. And yet a superior officer of this state has prostituted his high trust in exactly the same manner and is bold and brazen enough to come before this Senate and say that he is not guilty; that he was not a public official and that you have no jurisdiction over him. Such a defense as shown by this testimony is an affront to your dignity and to your intelligence. If an employee, selected for his honesty, integrity and ability, embezzles money and is punished, how much more so does public policy demand that a public official who is guilty of the same practices be vigorously and severely punished.

In connection with articles 2 and 4 of the articles of impeachment, you will remember that there were a number of depositions offered in evidence. Counsel for respondent contended earnestly, eloquently and vigorously that these depositions ought to be ruled out, well knowing that if they were admitted they would show a course of criminal conduct and fraudulent practices extending over a period of years. He very magnanimously said that he would have no objection to their admission if the board of managers would concede that in these various articles of impeachment it was necessary to prove criminal intent. Unfortunately we were not able to accommodate the gentleman and conceded nothing of the kind, nor do we now concede it. We proved to you conclusively that in a proceeding of this character, political in its nature and in its outcome, that we did not have to prove this respondent guilty of a technical crime; we therefore insisted that these various depositions from fifteen or twenty insurance companies, showing the collection of illegal and unwarranted fees in years gone by, were admissible to negative the idea of mistake and to conclusively and convincingly show illegal conduct, practice and system extending over a long period of time. We prevailed in this contention, and rightfully so, and these depositions were admitted and read in evidence. In calling your attention to them at this time, senators, and to the testimony therein contained, we are not asking you to convict Mr. Schively on them, but we are asking you to remember and consider them in connection with articles 3 and 4. The fifteen depositions in evidence show the collection of approximately three thousand dollars in entrance fees or examination fees, and the same depositions show that the examinations have never been made. The money has been collected and spent. The respondent admits this in his own cross-examination. He attempts to evade and says that he divided it with Sam Nichols. Then, I ask you, considering his defense in this case, if he was, as they contend, merely an employee or ministerial officer of Nichols, why should he turn half of the money over to Nichols? Why didn't he turn it all over to his superior officer, whom he says was his chief? I say, gentlemen, that this fact alone of the division of the spoils utterly refutes and annihilates this flimsy and worthless defense that he was a ministerial man.

You no doubt remember the testimony in connection with article 17. This article charges an offense of a different character. It involves the violation of another statute. The other articles which we have considered allege offenses which involve the positive violation of the statute relating to entrance fees. Now, we have the positive violation of the statute relating to examination fees. In this connection counsel grew rather humorous and facetious in discussing this statute, which says that "only actual and necessary traveling expenses can be collected." Counsel says that actual and necessary traveling expenses might include champagne, cigars and a suite of rooms at the Waldorf-Astoria. Well, in reply to that I may say that that was just the interpretation that John Schively placed on that statute, and that "actual

expenses" did include champagne, cigars and fine hotels. I want to ask you, senators, if that is a reasonable construction to place upon the statute. Does the expression "actual and necessary traveling expenses" mean that a man under color of public office has a right to arbitrarily exact from an insurance company any amount of money that he chooses? Does it mean that he has a right to practice extortion on them? Or, does it mean just what it says—that is, that reasonable actual and necessary traveling expenses only shall be collected? Counsel says that this is defective legislation and that the statute is ambiguous and susceptible of this construction. I reply that the inquiry here is not whether or not it is erroneous legislation, but the only inquiry is, was the law violated by J. H. Schively? The testimony here, we contend, conclusively shows that it was. Now, careful investigation and a reasonable construction of this statute must show you that examination charges of insurance companies cannot be made in the very nature of things until the examination is made. This is too plain to admit of discussion, but counsel has apparently overlooked it. There is a purpose in that statute, and the purpose was to prevent the very conduct and practice that Mr. Schively employed. The purpose was to require the insurance commissioner or his deputy to make the examination before collecting the money. You can readily see how any other statute would open the door to fraud, extortion and arbitrary conduct on the part of the insurance department. You can readily see that if this statute were not on the books to govern the insurance department, the department could then exact arbitrarily and frequently any amount of money that it chose from any insurance company. The legislature, having this contingency in mind, wisely provided that only after companies were examined could the examination charges be collected. Mr. Schively, according to the testimony, absolutely ignored this statute and treated it as a mere nullity. He apparently forgot that if the companies examined did not reimburse him, he had sufficient protection under another statute which provided that when the deputy insurance commissioner presented the bill for examination charges to the company, and it was not paid, he could then get his expenses out of the State of Washington and immediately revoke the license of the company. But he preferred not to invoke the protection of this statute, and proceeded in his own illegal, arbitrary and unwarranted manner and collected the fees whenever and wherever he pleased and in whatever amount. The laws governing the insurance department of this state at the time of Schively's alleged misconduct were plain. It was his duty to know them. It was his duty to enforce them. And his failure so to do, together with his violation of them, according to our contention, constitutes high crimes and misdemeanors and malfeasance in office; unwarranted, illegal and extortionate conduct. Mr. Schively thought that the laws were ineffectual. He preferred to exact a flat rate from each and every company and keep the spoils. No man can say how the insuring public of this state suffered from such conduct. No man

can say how many defunct companies have been given a perfunctory examination, given a clean bill of health and continued to do business in this state, taking your money and mine, until finally they went bankrupt. If such conduct, gentlemen of this Senate, is not illegal and reprehensible, and if it does not constitute malfeasance in office, then I assert that the constitutional provision relating to impeachment proceedings is absolutely useless.

You will remember the testimony in connection with article 17, which was to the effect that Schively demanded of Mr. E. W. Evenson, of Spokane, \$200.00 for a perfunctory and brief examination of Evenson's company. Evenson said in his testimony that the deputy insurance commissioner made a perfunctory examination, occupying but a few minutes, and demanded \$200.00. Schively, in his testimony, says that Evenson is wrong. Here, then, gentlemen, you have the question of the credibility of witnesses. What is the test for you to apply? The universal test is that when the testimony of witnesses conflicts on a material point, you must consider the interest of one party in the outcome of the case as compared with the interest of the other. I say the Evenson testimony bears the earmarks of truth and is most reasonable, because Schively himself testifies that it was the usual custom of the department, including himself, for a long period—a long number of years—to collect a flat rate of \$200.00 for examining insurance companies. Mr. Schively's own testimony in another connection supports Evenson's testimony here in connection with article 17. Mr. LeMaster testified that he made a detailed examination of Evenson's company and that Evenson paid him \$85.00 for his services. Now, if Mr. Schively had gotten Mr. LeMaster, who is an expert accountant, to examine the company, it might perhaps have been considered an examination by the insurance department, but, even then, how could Schively, under the law, say to Mr. Evenson, "I have examined the company and I am entitled to the pay"?

The testimony shows that Schively came into Evenson's office in Spokane, that he represented himself to be the deputy insurance commissioner of the state. Did he represent himself to be the clerk or a ministerial man in the insurance department of this state? Certainly not. He represented himself to be just what he was—the deputy insurance commissioner of the state and a public official, by virtue of which public office he had a right to examine insurance companies. He glanced over one or two books in Evenson's office, occupying, according to the testimony, less than half an hour. Now, let us be fair in this matter and give Mr. Schively the benefit of the doubt. He says he was there two or three hours. Let us assume that he was in the office a half a day. There is no testimony to that effect, however—but give him the benefit of the doubt and suppose he was there a half a day. What did the examination consist of? Schively says he received a copy of Mr. LeMaster's report. Is J. H. Schively, deputy insurance commissioner of this state, traveling for this state, collecting \$200 apiece from insurance companies for making examinations and ac-



cepting the reports of expert accountants who have made the examinations and been paid for them? If so, then he convicts himself by his own testimony of malfeasance in office and misconduct unbecoming a public official. Schively knew, when the Evenson episode occurred, of the statute which permitted only the collection of actual and necessary traveling expenses. We have proved in this connection, in support of this article, and counsel for respondent in his closing argument made no attempt to refute it, that the expenses of this trip to Spokane—giving Schively the benefit of the doubt as to the time that he was there and accepting counsel's construction that the term "actual and necessary traveling expenses" admits of a broad latitude—could not exceed \$75.00 at the outside.

The testimony shows that Evenson refused to pay Schively \$200.00, stating to him that it was an excessive and outrageous charge. Schively, in his usual magnanimous and charitable manner, said that he would be satisfied with \$100.00. And Evenson finally arranged that a check for \$100.00 be given to him. Here, gentlemen, is another beautiful illustration of the "sliding scale" which was the most distinguishing characteristic of Mr. Schively's administration. Schively says that he never asked for \$200.00. Evenson said that he did. Consider the interest of the parties in the outcome of this case. I leave it to you which one told the truth. Furthermore, the testimony shows that Schively violated another statute in neglecting and refusing to give a detailed and itemized statement of his expenses. Now, counsel for respondent may say that that is an unimportant matter, but the legislature did not so conclude when it placed that statute on the books. I say that that statute was for the protection of the insurance companies, and the only protection that the companies had against a tyrannical, arbitrary and oppressive officer. I will not review further the testimony in connection with this article, but submit to you that it completely establishes the grossest kind of moral turpitude and malfeasance in office, and this article, and the testimony in support thereof, standing alone, ought to be enough to convict John Schively and brand him as an unworthy and oppressive public official.

Coming now to the testimony on article 18, which concerns, as you will remember, the examination of the Western Union Life Insurance Company, of Spokane. I challenge your attention to the very significant fact that there is not a scintilla of evidence presented in behalf of the defense in connection with this article; therefore the article stands, according to elementary propositions of law, absolutely admitted. Why didn't they introduce some evidence as to this article? The only conclusion is, gentlemen, that there wasn't any to introduce and that the facts therein alleged and set forth, as the testimony here supports them, actually occurred. Mr. Philip Harding, the secretary of the company, testified here in behalf of the state in connection with this article. You saw him and you heard him and you must neces-

sarily have concluded that he is a man of integrity and sterling honesty; certainly he would have no motive in coloring his testimony. Harding said that Schively represented his examination charges to be \$50.00 a day. Here is another and different illustration of the "sliding scale." Harding testified that at one examination they paid Schively \$200.00 for a perfunctory examination, and the \$200.00 check is before you in evidence. Have they attempted to refute it, or deny it, or in any way controvert it? No. It must, therefore, be admitted, because things that are not denied or controverted in cases of this kind and character are certainly admitted. They may say that the general departmental policy comes to their relief, but I want to ask how much of that \$200.00, over and above actual expenses, was divided between Nichols and Schively, and I want to ask if it was divided according to the departmental policy. Schively's representations that his charges were \$50.00 a day were unwarranted, unauthorized and illegal. Certainly no statute came to his relief in making these representations. But he says, "I was not a public officer; I was merely an employee in the insurance department, and cannot, therefore, violate the laws." The more I contemplate this defense the flimsier and more ridiculous it becomes. It is to be observed, however, that as a ministerial officer he collected money, he issued certificates, he made examinations, he revoked certificates, and he admitted companies. The very statement of what he did in his official capacity is a complete refutation of this entire defense, but I will give them credit for interposing the only defense that could be invented by the mind of man. They had to fall back upon two propositions: *First*, a departmental policy, which is a high-sounding phrase and pregnant with vast meaning, according to their contention; and, *second*, the advice of the attorney general. I do not care to discuss further the proof of this article. It is clear, convincing and overwhelming, and ought certainly in your minds to completely establish Schively's guilt.

Mr. Schively's reprehensible and illegal conduct is further shown by the testimony in connection with article 19. It would serve no useful purpose to repeat that testimony. Schively says that when Mr. Ligget, of Idaho, and he made the examination of the Farmers' Mutual Live Stock Insurance Company, of Spokane, he did not know how much Ligget got. The testimony here—and I submit to you that it is uncontroverted—shows that Ligget got \$300.00 on the understanding then and there that Schively was to receive half, and the presumption is that he did, in view of his testimony on the other articles. Was he accompanying Mr. Ligget as an employee of the insurance department of this state? Was he there, according to his worthless defense, as a ministerial officer? No. He was there as an expert insurance man and was there to examine that company in conjunction with Mr. Ligget. Certainly it must be admitted that, whether or not he was an expert insurance man, he was an expert in the collection of fees. He says, "I don't know how much I got from Ligget." Well, gentlemen of the Senate, his memory is very good in some par-

ticals and very poor in others. He does know that he was there as an expert. He does know that he was away from his office. He does know that there were hundreds of companies that he had never examined, but from which companies he had received fees. He does know that he was operating under a departmental policy. He does know that he was a ministerial officer. He does know that he was not a public official, and yet, strange to say, he does not know how much money he got in this particular instance.

It is to be wondered that a man of his intelligence and business attainments did not keep some record of these collections. I say that the testimony in connection with this article establishes the fact that he neglected his duties, that he violated the law in not giving a detailed statement of expenses, and that he further violated the law in collecting more than he was authorized to collect.

Further discussion of the testimony would serve no purpose, because it is identical with the testimony introduced in connection with the preceding articles which I have already discussed.

Coming now to the testimony relating to article 20, I desire that you note particularly the same, and I want, briefly, to refresh your minds on it. There were two examinations made of a defunct company, one following the other by only four months. Did he collect his actual and necessary traveling expenses in each case? No; he again followed the "departmental policy" and collected \$200.00 each time. I won't say, gentlemen, that the receipt of this money was in the nature of a bribe—because I don't know—but I do say to you that this testimony shows one examination following the other in quick succession, the receipt of \$200.00 for each examination by Mr. Schively, and the subsequent bankruptcy of the company. You can draw your own conclusions from this testimony, and it would not be an unreasonable conclusion to arrive at that Mr. Schively well knew, or ought to have known, the defunct condition of this company at the time he last examined it. He says that he acted not only as deputy insurance commissioner here, but as an expert, because the company wanted to be admitted in other states. If that is true, I ask what right had he as a public official to operate in this state as an expert when at that very same time he ought to have been examining insurance companies in other states, from which companies he had extorted examination fees in advance. With these conclusions, I leave the question of his guilt or innocence on this article with you.

Article 21 of the articles of impeachment, concerning the Union Guaranty Insurance Association, of Portland. The testimony in connection with this article is about the same as the testimony in connection with the other articles. The defense imports Mr. Wagon, of Portland, to testify that the services rendered by Mr. Schively were expert services. I ask again, if they were expert services, was not Mr. Schively neglecting his duties as a public official of this state, and was he not therefore guilty of malfeasance in office and gross misconduct? I again say that the defense, when analyzed, becomes ex-

tremely weak and ridiculous. Schively states that he rendered expert services and received money ranging from \$50.00 to \$300.00 each time, and yet admits that he had at that same time thousands of dollars collected for examinations that had not been made. Certainly such conduct brands him as an unworthy official and as one who ought to be convicted by this Senate.

Article 23 is different from any other. Counsel for respondent in his answering argument touched upon it lightly and cautiously, and I do not blame him for doing so, because he was treading on dangerous ground. I shall not discuss the testimony of this article at length, but there are some significant facts which demand attention. The Atlas Insurance Company, of Des Moines, Iowa, was informed by Mr. Schively, as deputy insurance commissioner, that the entrance fee would be \$235.00. Schively wrote the letter to the Atlas company and made the representations above his official designation. Thereupon, according to the testimony before you, the Atlas company took it up with Mr. C. S. Best, of Seattle, who was an experienced insurance man, acquainted with the statutes of this state relating to the insurance department, and who was their prospective agent for the Northwest. Mr. Best, according to his testimony, came direct to Olympia and consulted Schively about his representations and took him to task for exceeding his authority and attempting to extort this money from the Atlas company. Schively then, in his usual whole-hearted manner, replied: "Mr. Best, if I had known that you were going to represent this company, the entrance fee would have been only \$35.00. Hereafter, if you will advise me of the companies that you desire to represent I will see that they will be admitted on this basis." There, gentlemen, is the alarming situation. Schively himself, while on the witness stand, admitted that conversation occurred. Did he tell you that there was any authority in the statutes for such conduct? Did he attempt to condone his conduct except by saying that he had a high personal regard for Mr. Best as an insurance man? Such practices on the part of Mr. Schively resulted in an unfair administration of the laws. To one company Schively said, "You must pay \$135.00"; to another he said, "You must pay \$235.00"; to another he said, "You can pay \$35.000." Is that the kind of a man that you want for insurance commissioner of this state? I challenge your attention to the very significant fact that the Atlas Insurance Company refused to enter this state and has entered it only within the last two or three months, and when they did enter it they only paid an entrance fee of \$35.00. Mr. Schively saw that the company would not tolerate his extortionate demands and refused to pay any fee except the statutory fee of \$35.00. It is unfortunate for Schively that in this case the company only paid \$35.00, because the State of Washington got that. If they had paid \$235.00, the \$200 would have been appropriated by him, as he testified it was in the other instances. It seems unnecessary to add that this attempted extortion constitutes a clear case of misconduct and malfeasance, for which a conviction ought to lie.

The testimony in support of articles 24 and 25 has been thoroughly presented by Mr. Manager Edge. In passing, I direct your attention to one or two points in connection with these articles. When Schively assumed charge of the Pacific Live Stock Association, of Spokane, he knew, or ought to have known, that it was in a defunct condition. Counsel replies, "If Schively had such a good graft in Olympia, why would he go over to Spokane and accept a position at \$400.00 a month when he was getting much more in Olympia?" I don't know why he went to Spokane, unless his conscience smote him. I don't know why he wanted to abandon his illegal and unwarranted practices in Olympia, unless he desired to reform. Perhaps he wanted to get into a decent insurance business. I don't know as to that. But the fact remains that he did not insist upon his resignation as deputy insurance commissioner, and that for several months he received a double salary, one from the insurance department of the state as deputy insurance commissioner and one as president of the Pacific Live Stock Association. Counsel for respondent has told you about the damnable outrages that have been perpetrated upon Mr. Schively, and I want to reply and say that Mr. Schively would never have been indicted for embezzlement or for perjury in Spokane, and he would never have been before the bar of this Senate if he had discharged the duties of deputy insurance commissioner in the city of Olympia, under and by virtue of the statutes of this state. But the field was too tempting and he needed the money; he needed it, according to his own astounding testimony, to defend himself against litigation. We may perhaps be sorry for him, that he is involved in litigation, but, as I said at the outset of this argument, there is no one to blame but himself. The people of this state are not responsible, because when they see a public official openly and brazenly violating the statutes of the state and extorting vast sums of money from insurance companies they have a right to ask and demand relief.

The testimony shows that Schively examined the Pacific Live Stock Insurance Company, receiving on one occasion \$200.00 and on another \$100.00. Not long after these examinations the company went defunct. It is peculiar, indeed, that if he made a proper examination of the condition of the company, he could not ascertain their defunct condition. Now, it may be consistent and proper for a public official to collect two salaries—one from the state and one from an insurance company—but, if it is, it opens the door to fraud and chicanery. Mr. Schively had the authority to revoke the license of this company and wind up its business, and yet do you suppose that when he was receiving a nice, fat salary from them that he would presume to infringe upon their rights to this extent?

Mr. Israel, in discussing the perjury charge of these articles, was very venomous in his reference to some of the state's witnesses. All I have to say in reply is that we are afflicted with frailties and imperfections, and his own client is not an exception, as the testimony shows. I do not believe that any witness on this stand for the state

wilfully or maliciously falsified. Perhaps they have contradicted themselves in some minor details, and if so I leave the weight of their testimony for you. I desire to say before leaving the perjury charge that if Schively drew his salary of \$400.00 a month, as he said, it is indeed a peculiar circumstance that he drew that salary in different checks ranging in amount from \$30.00 to \$568.00. Who ever heard of a man drawing a salary of \$400.00 a month, a straight salary, and being paid in checks of widely different amounts. The business-like way would have been to draw his salary either weekly, semi-monthly or monthly, in payments of \$100.00, \$200.00 or \$400.00. Again, Schively says that he might have signed the notes. For the first time he makes this confession. Why didn't he tell the grand jury of Spokane county honestly and frankly that he might have signed the notes. The foreman and others of the grand jury testified that he swore positively and repeatedly that he never signed the notes in question and never saw the notes. Now, after he has reflected and after consultation with counsel, he testifies that he might have signed them and he might have seen them. His testimony is conflicting, and it is for you to determine on that testimony whether or not he committed the crime of perjury before the grand jury of Spokane county. His counsel cries out in sympathy for his client and says that the grand jury harassed and vexed and browbeat him. That contention is humorous. Mr. Schively is a man of intelligence, attainments and great ability, and yet his counsel would have you believe that Mr. Schively was called before that grand jury, and out of his mouth they forced him to say that he was a perjurer and embezzler. I venture the statement, with all due respect to the grand jury, that Mr. Schively was more intelligent and had a keener intellect than any man on that tribunal, and yet they browbeated, threatened and insulted him to such an extent that they finally extracted from him certain statements that he says now were not true. The legitimate conclusion of the whole matter is that Mr. Schively has a consciousness of guilt; that if he had told a straightforward and honest story he would not today be in any difficulty. Counsel's insinuations about the grand jury are exceedingly inappropriate. I know the grand jury and the foreman of it, and know that it is one of the cleanest and most honest tribunals ever assembled in this state. I know that they were perfectly fair with Mr. Schively, and I again say that if Schively had told the truth before that grand jury he would not now be here to answer this charge. In conclusion of this article, I assert that, although technical perjury may not have been established to your complete satisfaction, yet certainly the circumstances show a gross moral turpitude and a lack of honesty and integrity that unfit this man to hold the office that he now occupies.

Before I conclude I want to call attention to some of the things that counsel for respondent has said in his argument and to some parts of Mr. Schively's testimony, and then I will be willing to submit the case to the Senate.

Counsel attempted to becloud and confuse the issues by injecting politics into his argument, and I am surprised that a man of his learning and ability should thus attempt to deceive this Senate, and I do not believe that you will be deceived by that character of argument. He talked long and loud about the newspapers and about the governor, and particularly about the Tacoma "Ledger," of Tacoma, and the "Post-Intelligencer," of Seattle. It is not in the record, but he would have you believe that there was a dire conspiracy to blacken and forever damn this respondent. It is a miserable effort to avoid the facts of the case. And then he said, "I don't want to appeal to your sympathies or to your prejudices," and I respond that by that character of argument he attempted to appeal to your sympathies and your prejudices and had nothing else in mind at the time. He says that these articles of impeachment were preferred by the acting governor after he assumed office. I say that Governor Hay had nothing to do with the actual preferment of these articles of impeachment. They were properly and legally preferred by the House of Representatives. I imagine that Governor Hay's only interest in this matter, as evidenced by his past conduct and statements, is in behalf of good, clean, decent and honest government. He has manifested a disposition to uphold those principles of government which are so vital and important. Outside of that he has nothing to do with this case. It must be determined upon the law and the evidence upon which counsel has harangued so much.

Then counsel next criticizes and condemns the attitude and conduct of the legislative investigating committee, and says that Mr. Schively was not given a fair deal before that committee. He says that the "hidden hand" was all the time governing the actions of that committee. I resent that kind of argument, which is not based on any facts in the record here, as improper and highly prejudicial and an apparent attempt to again appeal to your prejudices. I don't believe that you will be in any way moved by such claptrap and sophistry.

In behalf of the legislative investigating committee, I assert, and it is well known, that Mr. Schively and his attorney, Mr. Israel, had an opportunity to be present and were extended every courtesy. It was only when things got too hot for them that they did not want to be present. At no time were they denied admission; at no time were they denied an opportunity to make explanations or present a defense, and it seems to me that it comes with very poor grace at this time in defense of this man to say that there was a "hidden hand" clutching at him and attempting to crush him at the door of the investigating committee. His past conduct no doubt made him see the spectre of a "hidden hand."

Counsel then argues that the outcome of this trial is important to Mr. Schively, to his family, to his relatives and friends. Yes, Mr. Israel, and I reply that the outcome of this trial is equally important to the people of the state, who are wondering if they can get relief from the arbitrary conduct of an official tyrant. I reply that sympathy

for the family of the man is not a proper consideration at this time, and if it were, that sympathy for the entire people of this great state completely neutralizes any sympathy that might be had for the man or his family.

Under the constitution, senators, you are designated as an impeachment court—the highest court that can be created in this state. I ask you, are you going to be swayed by any argument of this kind, or by such an appeal to your sympathies, your passions and your prejudices, or are you going to obey your oaths and decide this case upon the law and the evidence introduced and discussed in this Senate chamber?

Counsel says that a conviction, of which he apparently is very fearful, will deprive Schively of his citizenship. As I stated some time ago, no one understands where he gets the authority for this statement. He comes before forty-two intelligent senators and says, "If you convict John Schively, you take from him his citizenship." And I reply, with the constitution as my authority, that neither this tribunal nor any other tribunal can deprive a man of his citizenship and attain him, and I defy counsel to show me where any impeachment trial in the United States, resulting in conviction, has ever deprived a man of his citizenship. Gentlemen, I denominate it here and now as a "gallery play"—nothing more, nothing less. The constitution says, "Judgment shall extend no further than removal and disqualification." This means exactly what it says, and counsel ought to have read it and he never would have made the argument that he did.

There are three judgments that you can render in this case: *First*, you can remove Mr. Schively and not disqualify him; *second*, you can remove him and disqualify him; *third*, you can remove him and disqualify him for a certain period. Those are the only judgments that you can enter. If I thought it necessary, I could cite you precedents to sustain this contention in answer to counsel's argument, but I do not think that it is necessary. I simply wanted to call your attention, senators, to the fact that in an impeachment proceeding where conviction results, a man cannot be deprived of his citizenship.

Counsel spent a long time in his argument to show that Sam Nichols was responsible for the "departmental policy" which has been interposed here as a defense. I say that such an effort to unshoulder the guilt upon an aged and ex-superior officer of this state is a cowardly attempt to evade responsibility. I have no particular eulogies to pronounce upon Sam Nichols, but I do know and you know that for over forty years he was a clean, decent and upright man, a large part of which time he was a public official. He was well considered by the people of the State of Minnesota and the people of this state. There never was a breath of suspicion directed against him until his connection and association with John H. Schively. I would not mention these things at this time were it not for counsel's attempt to becloud the issues in this case and excite your sympathies



for his client. And I want to say further that no man under the shining sun is responsible for the downfall of Mr. Schively except Mr. Schively himself.

In addition to the departmental policy which counsel has talked about so long and so earnestly, there is another peculiar defense in this case, as the testimony shows, to the effect that Schively's conduct was authorized and legalized by the opinion of John D. Atkinson, attorney general of this state. Defense after defense tottered and fell, and finally they came back and concluded that John D. Atkinson would be a good man to hide behind, and so they imported him. Unfortunate for them, he was a reluctant and unwilling witness. Counsel for respondent is compelled to admit that Mr. Atkinson's testimony shows that he was an unwilling witness. An amusing situation presents itself. They base their case upon Mr. Atkinson's testimony; they say that he is their most important witness, and yet they brand and stigmatize him as an unwilling, and unsatisfactory and a reluctant witness. No wonder he was, because he told the truth. If he was an unwilling witness, it was because he did not want to conform his testimony to the theory of this defense and he knew that he could not honestly and honorably do so. John D. Atkinson was called before the legislative investigating committee, as the testimony before you shows, and he answered the questions that were put to him. Counsel says that Mr. Schively was not there and his attorney was not there. Was it necessary for Mr. Schively and Mr. Israel to be there in order to have Mr. Atkinson tell the truth to the legislative investigating committee? His testimony before the investigating committee was unfavorable to this respondent. Having this in mind, when Mr. Atkinson took the stand in this Senate chamber, counsel approached him very cautiously and very carefully. He did not ask Mr. Atkinson when the conversation with Schively occurred, at which time Schively says Atkinson stated that they could collect an advance fee from each company. Counsel did not ask him about the month or year—which was the most vital part of his testimony. Counsel well knew and this respondent knew that John D. Atkinson would say, as he did on cross-examination, that if this advice was given at all it was given in the month of January, 1907. That is why he was not asked the date and the time. Schively says that this conversation occurred in the early part of 1905. Atkinson says that it occurred in 1907. There is a remarkable discrepancy for you to consider, and in order to support this defense and give it life and vitality you must say that Schively is correct and that Atkinson either falsified or is mistaken. Considering the interest that Atkinson has in the outcome of this trial, can you consistently reach that conclusion. I asked Mr. Schively on cross-examination if he did not state before the investigating committee, under oath, that he did not remember in what year this advice was given him and he said, "Yes, I remember saying that." Then I said, "You have refreshed your memory since that time as to the year in which it was given," and he said, "Yes." Of course he has re-

freshed his memory; of course it was important to fix that time in 1905; but I say to you, gentlemen, that Atkinson was correct and that that conversation occurred, if it occurred at all, in January, 1907. If such an important conversation occurred, could not Schively have fixed it closer than two years? My version of this transaction, and I submit it to you as a reasonable one, is that Schively, as deputy insurance commissioner of this state, consulted Atkinson upon certain matters when he wanted to examine a few companies in the east which would involve an expense of several hundred dollars; that he did not have the money and that he wanted to know if in this particular and individual instance he could collect it in advance. I submit to you that the testimony of Atkinson shows conclusively that there was not a word said about "wildcat" insurance companies; that there was not a word said about erecting barriers to keep out defunct companies. Schively says that there was. Atkinson says that there was not. Again you must determine which is the more credible witness. Atkinson stated that he advised them to borrow the money and that nothing was said about collecting a flat rate from each any every company. I do not believe that John D. Atkinson would have given the advice that Schively said was given, because Atkinson must have known that such advice would result in a violation of the law. Counsel for respondent says that the conversation about "wildcat" and irresponsible companies did occur. John D. Atkinson says that it did not. Which man is in a better position to know whether it did or did not? Atkinson was there and engaged in the conversation and Mr. Israel had not yet entered this case, and certainly was not there. I call your attention to this portion of the testimony: "Do you remember, General Atkinson, whether or not you advised Schively at that time that he could collect an advance examination fee for each and every company coming into the state to cover prospective examinations which might occur in the immediate or distant future?" A. 'I don't think that was discussed.' Q. 'Was any conversation had at that time about examinations to occur in the distant future?' A. 'No, I recall none.' Q. 'Did he ask you at that time whether or not this fee could apply to all insurance companies coming into the state?' A. 'That was not discussed.'" Now, gentlemen of the Senate, Schively says it was discussed and the defendant's counsel says it was discussed, and they spent half a day here attempting to show you that it was. They base their entire defense on that. But John D. Atkinson, under oath, says that that conversation did not occur. Who are you going to believe?

Again, the testimony is as follows "Q. 'In other words, the conversation related to some examination, as you remember it now, which had to be made at that time and they did not have the money to go east and they wanted to borrow it?' A. 'Well, that was as I recall it now.' Q. 'And the best of your recollection now is that the conversation occurred in or about January, 1907?' A. 'That is the best of my recollection.' Q. 'Calling your attention to the testimony on page

312, did Schively in that conversation lead you to believe that this advice was sought so as to protect himself in the examination he was about to make and the expenses of which he could not meet?" A. 'My idea was that Mr. Schively did not have the money to go to make these examinations.' Q. 'Was the purpose of that conversation to ascertain whether or not a flat general rate could be applied to all companies coming into the state?' A. 'It was not.' Q. 'Is that substantially correct, Mr. Atkinson as to what occurred before the investigating committee?' A. 'That is correct.'" Now, gentlemen, with that testimony before you, what does it prove? Connect that testimony with the testimony of this respondent and what does it show? It shows conclusively that the only purpose of that conversation between Schively and Atkinson was to ascertain whether or not certain companies could be compelled to pay an examination fee in advance, which companies were about to be examined by Mr. Schively. There was and could have been no other purpose in that conversation, notwithstanding counsel's assertion to the contrary.

I leave this portion of the testimony, with the observation that John D. Atkinson undoubtedly told the truth; that he never at any time authorized Mr. Schively to collect a flat rate entrance fee of \$235.00, and that he, by his testimony, absolutely rebuts this flimsy defense.

Counsel in very complimentary terms refers to the conduct and management of this case on behalf of the state. He said that he had won his spurs, and I might say that if he has not won them in the past he has certainly done so in this case. He has cautioned you against the flights of fancy and bursts of eloquence which I would indulge in, to your immense entertainment, and he stated that I had spurs to win. In reply, senators, I say that as a practicing attorney and an officer of this state I would not seek any spurs by securing the political downfall of any man. As a state official, paid a meager salary, and discharging my duties under the law, I am here to perform those duties and for no other reason and for no ulterior purpose. I do not have to climb the ladder of success at the expense of this or any other man. The board of managers and the attorney general's office are not in this case voluntarily, but because they were called in by the House of Representatives. We have done our duty and have introduced the evidence and discussed the law in a fair and frank manner, and I want to say that if there have been any bursts of eloquence and flights of fancy they have all emanated from the other side of the table. We have confined ourselves to the law and the evidence and upon that we expect a judgment of conviction.

Counsel further spent considerable time in talking about defective and imperfect legislation, an issue foreign, irrelevant and immaterial in this case. I cannot and do not now see the connection between that argument and this case. Is defective legislation any defense for criminal conduct? Mr. Schively knew when he assumed the office of deputy insurance commissioner that the salary was \$150.00 a month;

he knew what his duties were; he knew what his powers were, and he knew, or ought to have known, the laws which governed him. If he violated those laws, he cannot ascribe the fault to defective or imperfect legislation, but to himself and to himself alone.

Before passing to some interesting portions of Mr. Schively's testimony in this case, I desire to answer the challenge which Mr. Israel made in his argument. He said, "You have written letters to every insurance organization in the United States and you have only produced thirteen to show the collection of this fee." In reply, Mr. Israel, although it is outside of the record and I would not have made it were it not for your challenge, I may say for your information that there are scores of letters on file which show the collection of a \$235.00 fee from each company. There are perhaps eighty or more letters which show the collection of this illegal, unwarranted and extortionate fee. We have not secured depositions from these various companies, for the reason that the evidence would be mostly in the nature of cumulative evidence. And I say further that not a single one of these eighty companies has ever been examined, and I ask you, and I challenge you now at this time, to tell this Senate what became of the money. Schively says that he kept no record of the money that he received and that nobody knew and nobody can know how much it was.

Answering the argument of respondent's counsel that Mr. Nichols directed Mr. Schively to do these things, it must be apparent to all that Mr. Nichols could not authorize John Schively to do an unlawful act. His superior had no right or authority to direct him to do those things involving moral turpitude and criminal conduct, and, if he did so direct him, it was Schively's duty as a public official to refuse to obey and to repudiate the directions. The testimony in this case, however, does not show that Nichols directed and authorized Schively to do this, but that Schively did it of his own volition, and then out of charity divided the spoils with Mr. Nichols, because Mr. Nichols had been kind enough to place him in a position to collect these unlawful fees.

There are a few portions of Mr. Schively's testimony which may have escaped you and which ought to absolutely convince you of his moral turpitude and his malfeasance and misconduct in office. Mr. Schively was on this witness stand for a long time. He was in the hands of an adroit and skillful counsel. Did not his conduct and his bearing on that witness stand indicate conclusively a guilty conscience? One of the tests that a trial court gives to a jury in the consideration of testimony is this: "In determining the credibility of a witness you have a right to take into consideration his conduct and demeanor on the witness stand; his interest in the outcome of the trial; his apparent frankness or lack of it," etc. I ask you to apply this test to the testimony of Mr. Schively during the day that he was on the witness stand.

I call your attention particularly to the following portions of his testimony:

"Q. 'You spoke in your direct examination, Mr. Schively, of receiving the advice of the attorney general, Mr. Atkinson?' A. 'I did.' Q. 'What year was that in?' A. '1905.' Q. 'What month?' A. 'I don't remember the month.' Q. 'Did you or did you not state before the legislative investigating committee of this state, under oath, on or about the 15th day of May of this year, Messrs. McMaster, Taylor, Hubbel, Fishback and Allen present, that you did not remember the year in which that advice was given?' A. 'It is probable that I might have so answered, but I did not at that time know the date.' Q. 'But since that time you have learned the year in which that advice was given?' A. 'I have.' Q. 'Have you learned the month?' A. 'I have not.' Q. 'Are you willing to go on oath before this Senate and state that that amount was not determined before the year 1905?' A. 'I am not.' Q. 'Now, you say Mr. Atkinson advised you that you would have the authority to extract or collect in advance the examination fee to cover examinations which would be made in the future?' A. 'Yes.' Q. 'Was anything said about a flat examination fee at that time?' A. 'There was not.' Q. 'Will you state to the Senate if there was anything said in that conversation about 'wildcat' insurance companies?' A. 'To Atkinson?' Q. 'Yes.' A. 'I don't remember as to that.' Q. 'I thought you said upon direct examination that the very purpose of that interview with Atkinson was to ascertain how you could keep 'wildcat' companies from flooding this state?' A. 'You have limited the scope of what I said. The discussion between Mr. Nichols and myself was about 'wildcat' companies that would come into this state—upon experimental companies.' [Rambling, unintelligent answer to that question.] Q. 'That is what I want to know, whether or not you went to Atkinson and told him that these 'wildcat' companies were flooding the State of Washington; that the department had no time to examine them and that you wanted to know whether or not you could raise a barrier in the way of advance examination fees?' A. 'That was settled upon by Mr. Nichols and myself, but was on the departmental policy.' Q. 'Are you able to state in that conversation with Atkinson whether or not any reference was made to the conversation with Mr. Nichols as to 'wildcat' companies?' A. 'I might; I can't positively state.' Q. 'What, then, was your purpose in going to Mr. Atkinson, if he didn't know the facts?' A. 'To find out if we could collect these examination fees in advance.' Q. 'Regardless of the insolvency of the company?' A. 'We simply wanted to know that one fact.' Q. 'In other words, you went to Atkinson and said, 'General, we want to know whether we can collect examination fees from companies coming into this state in advance'; and he said 'Yes,' and you went out?' A. 'No, sir, I didn't so testify. I understood that was the result of our conference, and we entered into a full discussion of the matter and I am not able to say'— Q. 'You don't remember whether you went into a full discussion?' A. 'I don't remember.' Q. 'Do you remember whether you mentioned any of

these 'wildcat' companies?' A. 'I don't remember.' Q. 'How do you remember with so much accuracy that this is the advice he gave you then?' A. 'Because that is the advice we went after.' Q. 'Will you state now, before we pass over this evidence, whether or not you mentioned to Atkinson that 'wildcat' and irresponsible companies were coming into the state and you wanted to put up a barrier to keep them out?' A. 'I answered that question by quoting the language of my preceding one.' Q. 'Will you state to this Senate what 'wildcat' or irresponsible company has ever been kept out that agreed to put up the \$235.00?' A. 'What's that?' [*Question read*] A. 'There is an assertion in that question that there are 'wildcat' companies in this state.' Q. 'Do you want to answer that question or not?' A. 'I don't know how to answer that question, because I don't know the import of the question.' Q. 'Well, I will make it so as you can understand it. I want to be understood. Was any company ever kept out of the State of Washington that paid the \$235.00 advance entrance fee?' A. 'There was not.' "

Gentlemen of the Senate, in the face of that astounding testimony, can you reach any other conclusion but that Mr. Schively is guilty? He says that any company, regardless of its solvency or condition, could come into this state upon the payment of \$235.00, and you know and Schively knew and we all know that "wildcat" and irresponsible companies would ask for nothing better. They knew that if they paid this advance entrance fee, far in excess of the statutory fee, that in all probability they would never be examined; that they could do business in this state for a few years, then either become defunct or withdraw.

I call your attention now to further excerpts from Schively's testimony:

"Q. 'State to the Senate what became of the \$100.00 collected from the Boston Insurance Company and the \$200.00 from the Capital Life Insurance Company?' A. 'When that money was received the original intention was that Mr. Nichols and myself would examine the company; when the money was received Mr. Nichols received one-half of the money and I received the other.' Q. 'The companies have not yet been examined and the money has been appropriated by you, has it?'"

Now, senators, listen to this amusing and unintelligible answer:

"A. 'The money has been appropriated for the purpose of meeting expenses to make the examinations.'"

Gentlemen of the Senate, the question was intelligible and the answer idiotic. The answer says that the money has been appropriated for the purpose of meeting expenses to make the examinations. No one can interpret that language except Mr. Schively himself. Again, the following occurred in cross-examination:

"Q. 'State to the Senate whether or not you got this amount and similar amounts from all other insurance companies and whether you kept this amount as a trust fund to cover future examinations?' A. 'We kept these as our own fees, necessary when examinations were made.' Q. 'Suppose you hadn't made the examinations for two years,

as is true in connection with article 4, where is the money?' A. 'The money is in the hands of Mr. Nichols and myself. Now, when I say in the keeping of Mr. Nichols and myself, I simply mean we are holding ourselves, or at least I am holding myself, responsible for the making of these examinations. I don't mean to say that we put the money aside.' Q. 'Have you got any of it now?' "

Now, senators, listen to the most astounding answer to any question in this entire testimony and in this entire proceeding. This answer, alone, is enough to convict John Schively of each and all of the charges in these articles of impeachment. The answer to the question, "Have you got any of the money now?" is as follows:

"A. 'Not since these legal proceedings have been started against me.' "

Gentlemen of the Senate, was ever a more startling confession made by a public official in the history of this or any other state? Collecting money, nobody knows how much—Schively says he does not, and we do not—and appropriating it for his own personal use. If that confession does not establish the moral unworthiness and turpitude of this man, holding this office, then I say to you that you ought to abolish the constitution as a meaningless instrument. Even if your sympathies were for Schively, even if you have been swayed by the magnetic eloquence of counsel, you ought to convict John Schively on this one answer alone.

I call your attention further to this testimony:

"Q. 'The money has been spent, has it?' A. 'Yes, it has been spent.' Q. 'In other words, you collected an examination fee of these two companies and from a great many other insurance companies and spent it?' A. 'Yes, sir.' Q. 'And you haven't got any of it now?' A. 'No, sir.' Q. 'You don't remember about Sam Nichols, do you, whether he has got any left or not?' A. 'I don't know about him.' Q. 'Was it your custom up to 1909 to collect this advance examination fee from these companies and spend it?' A. 'It was the custom of the— We received money'— Q. 'Read the question, Mr. Stenographer.' [*Question read.*] A. 'If we needed it, we spent it.' "

Gentlemen of the Senate, words are inadequate to express my feelings in connection with this testimony. A superior officer of the State of Washington coming before this Senate with a dozen miserable and flimsy defenses and on his cross-examination, in full possession of his mental faculties, assisted by an adroit counsel, confessing to you at the bar of this Senate that he collected the money, that he does not know how much, that he spent it whenever he needed it. I say that you will certainly be derelict in your duties if in the face of that astounding confession you do not find him guilty of malfeasance in office, moral turpitude and high crimes and misdemeanors.

If the constitution, in its provisions relating to impeachment trials, has any significance at all, it certainly must cover offenses of this character. Can any of you, in the face of Mr. Schively's cross-examination, go back to the people of your districts and say, "He is a

proper superior officer and is entitled to your confidence?" Counsel says he is entitled to sympathy and that he deserves another chance, but I reply, gentlemen, that the leopard cannot change his spots.

Just a little more of this interesting testimony and I conclude:

"Q. 'Mr. Schively, you heard these depositions read in evidence, relating to articles 3 and 4, did you not?' A. 'Yes, sir.' Q. 'These depositions show that three thousand dollars has been received within the last two years. Will you state where that money is?' A. 'I have already made the statement that when the money came in in the way of advance fees Mr. Nichols received one half and I received the other.' Q. 'Will you testify what you did with your one-half?' A. 'It is gone.' Q. 'Where?' A. 'Largely in looking after my interests in these legal proceedings.'"

Senators, another most startling and most astounding confession, and yet, in spite of this confession, counsel comes before you with the appeal that Mr. Schively was elected by a magnificent majority of fifty thousand and should be acquitted.

A few more selections of this testimony, and I am through:

"Q. 'In other words, Mr. Schively, this money has been appropriated for personal matters?' A. 'Yes.' Q. 'It had nothing to do with the insurance department of this state?' A. 'Nothing whatever.'"

Gentlemen, such testimony as that, coming from Mr. Schively's own lips, requires no comment from me. It alone convicts him.

"Q. 'I will ask you, Mr. Schively, how it is that since you have testified that you collected this advance fee from every company, and 182 companies have entered this state—I will ask you if that number of companies multiplied by two hundred does not make the amount I called your attention to a moment ago?' A. 'I haven't testified that every company that entered the transaction of business in this state paid \$200.00.' Q. 'How many, then, and what percentage of companies did pay it?' A. 'I don't know.' Q. 'Can you approximate it?' A. 'The home companies didn't pay it.' Q. 'Outside of the home companies, can you approximate it?' A. 'A great many of the outside companies, all of those coming through 'Frisco, paid only \$100.00.' Q. 'You had some arrangement with 'Frisco, didn't you?' A. 'Yes, sir.' Q. 'Notwithstanding the fact that they represented companies on the Atlantic coast?' A. 'Yes, sir.' Q. 'Have you got any record in the insurance department of this state to show from what companies these fees were collected?' A. 'I have not.' Q. 'Well, if there are no records in that office, where are they? Must you go to every insurance company in the United States and find out if they paid you? State to the Senate how you are able to know whether or not you examined these companies?'"

Now, senators, listen to this reply, in view of the defense here in this case, that the examinations are to be made in the future of the companies from whom money was collected.

"Q. 'State to the Senate, as I asked you, how you are able to know whether or not you examined these companies?' A. 'These companies



that are transacting business in this state are all being examined.' Q. 'That is your explanation, is it?' A. 'Now, may I finish?' Q. 'Certainly.' A. 'If I should go to the Boston Insurance Company or send an agent there to have that company examined and a bill was presented, to the Boston Insurance Company, with a statement of expenses, and the Boston Insurance Company should say they had already paid for that examination, the Boston people would not again be asked to pay for that examination. I would acknowledge myself personally responsible thereafter for the expense of that examination.' Q. 'So that is the only way that you know what companies in the United States have paid advance examination fees?' A. 'Yes, sir.' Q. 'The only way is by going yourself and examining them and they stating to you that they have paid the fees?' A. 'Yes, sir.' Q. 'That is the only way, is it?' A. 'Yes, sir.' Q. 'Otherwise you have no record and cannot approximate how much you received from these various companies.' A. 'That is correct.' "

Gentlemen of the Senate, I do not care to read from that record any longer. That testimony does not need discussion or elaboration. If the members of this Senate are willing, under their oath taken here, to go on record and say that such conduct does not constitute high crimes and misdemeanors and malfeasance in office, then, gentlemen, that responsibility is yours to assume. You owe a duty to the people of this state in the light of that confession by Mr. Schively, and I trust that you will perform that duty properly. There is only one judgment that you can pronounce in this case, and that is a judgment of guilty. We would be willing to rest the entire case on Mr. Schively's cross-examination, because by it he makes himself out an embezzler and an officer who has been guilty of extortion, arbitrary and oppressive conduct and the grossest kind of malfeasance in office.

If, as John Schively says, he has no record in the insurance department of the companies that have paid this advance examination fee, then, I ask, who has the record? One hundred and eighty-two companies entered the State of Washington since 1905, and approximately 300 insurance companies are doing business in the state at present. Each any every company paid an advance fee of from \$35.00 to \$335.00, and yet there is no record of the amount received nor of the companies that paid it.

Counsel entertained you very eloquently for a half an hour with a dramatic peroration on the "hidden hand." I myself, if I were not familiar with the facts in this case, and had not listened to this testimony, might, perhaps, be moved by his eloquence. Senators, what is the "hidden hand" to which counsel has referred? I will tell you what it is. It is the awakened conscience of the people of the State of Washington—nothing more and nothing less. They say that it slumbers on and on and is finally awakened in all of its majestic might, and that 's

certainly true in this case. The "hidden hand!" Yes, senators, the "hidden hand" is the awakened conscience of the people of this commonwealth that has been slumbering for the past ten years. The "hidden hand" is the hand of Destiny. It is the hand of Fate; the hand of Justice. Counsel overlooked the Scriptural injunction that "The way of the transgressor is hard," and if he had consulted the Scriptural passage he would have found an explanation of the "hidden hand." This so-called "hidden hand" has no political significance to it. It is just the conscience of the people of this fair state of the Northwest. It has finally burst out in all of its force and all of its vehemence. The "hidden hand" means, gentlemen, will you give life, force and vitality to that instrument known as the constitution? Will you condone malfeasance and misconduct in office? Will you brand with your approval such methods of embezzlement and larceny?

Our duty in this case is done. The managers have done their duty and I have done mine. We can justify ourselves with the consolation that we have presented the law and the evidence honestly and fairly. As a state official, just as you are, I have done my duty and it is now for you to do yours. The case has been thoroughly presented to you. I trust that never again in the history of this fair and proud state of the Northwest will it be necessary for a state Senate to sit in judgment upon a superior officer. But I caution you not to be misled by the mysterious allusion to the "hidden hand." The "hidden hand" is your conscience and it is mine. It is the conscience of the people of this state, and if John Schively had a clear conscience himself and a good record, he would never have uttered what he did on that witness stand and would never have been disturbed by any mysterious "hidden hand."

Shall the judgment of this Senate go out to the people of this state and the people of this coast that a superior officer can confess under oath that he took a vast amount of money, collected it extortionately, and spent it illegally, and yet be acquitted? If you send that kind of a proclamation out to the people of this country, then it places a premium upon dishonesty and corruption and it means that an impeachment trial is an absolute farce. The impeachment provision was not placed in the constitution for mere embellishment. It was placed there for practical purposes, and it is now for you to inject life and meaning into that provision. Do you want to annihilate it? Do you want to repudiate it, as counsel would have you do, or do you want to set an example here for coming generations?

In conclusion, I may say that Mr. Schively is a good friend of mine, and he and his counsel must admit that he has received fair treatment in this case. Personally I have everything to say for him. Officially, I have nothing. Are you going to judge him on account of his personal qualifications and merits or are you going to judge him on his official conduct. The people of this state are at this hour looking to the Senate chamber of this state for relief. This is no political contest, and the results of this trial will not pass away upon the

adjournment of this impeachment tribunal, but the judgment that you will render here will make history. I ask again, do you want to place the stamp of approval upon official corruption and malfeasance in office, or do you want to say that no man can prostitute his high trust and remain in office because he is deserving of sympathy? Remember that Schively is not alone on trial here, but remember that principles of good, clean and decent government are on trial, and that you will either uphold or repudiate those principles. Remember that your judgment here will be far reaching in its consequences and will determine whether democratic government shall be a success and the people shall truly rule, or whether official tyrants shall continue to hold sway in public office. Let the outcome of this case be what it may, let the results of your judgment be what they may, you are not responsible for them. You were called into this case to try it by the constitution, and if you render a judgment you are not responsible for the effects of that judgment, inasmuch as the constitution has fixed them. You have discharged your duties patiently and well. Let the consequences fall where they may. I trust that in your impartial deliberations you will be governed by the law and the evidence, and if you are, a judgment of conviction must result.

In behalf of the board of managers and the attorney general's office, I thank you for your patience and your consideration manifested in this trial.

BY SENATOR ALLEN: I would like to have the secretary read my resolution at this time.

BY THE PRESIDENT: Mr. Secretary you may read the resolution.

BY THE SECRETARY: "*Resolved*, That when the argument for the state is closed, the Senate shall, without debate, proceed to ballot upon the separate articles of impeachment. Any senator desiring to explain his vote shall reduce such explanation to writing and file same with the secretary, who shall read such explanations before the vote is had, and the roll call shall then proceed without interruption, such explanation not to exceed five minutes in time."

BY THE PRESIDENT: It is moved and seconded that the resolution just read be adopted. Are you ready for the question? As many as are in favor of the adoption of the resolution say "Aye"; contrary, "No." The ayes have it.

BY SENATOR COTTERILL: I move that the Senate now take a recess till eight o'clock this evening.

BY SENATOR PAULHAMUS: I amend by saying 7:30.

BY SENATOR HUTCHINSON: I move an amendment until 9 o'clock in the morning.

BY THE PRESIDENT: It is moved and seconded that the Senate take a recess until 9 o'clock tomorrow morning. As many as are in favor of the motion say "Aye"; contrary, "No." The nays appear to have it. It has been moved and seconded that the Senate do now take a recess until 7:30. As many as are in favor say "Aye"; contrary, "No." The ayes have it. This court will stand adjourned until 7:30 p.m.

## EVENING SESSION.

The Senate, sitting as a court of impeachment, convened at 7:30 p. m.

BY THE PRESIDENT: The secretary will call the roll of the Senate.

BY THE SECRETARY: The absentees are Senators Graves, Nichols, Hutchinson and Stevenson.

BY SENATOR ALLEN: I move that the sergeant-at-arms be instructed to find the absent senators and bring them to the bar of the Senate.

BY SENATOR MINKLER: Senator Hutchinson informed me that he was sick tonight and would not be here and asked to be excused.

BY SENATOR ALLEN: I demand a call of the Senate.

BY SENATOR BOOTH: Mr. President, I arise to a point of order. A call of the Senate is not necessary. The presiding officer of this court can direct its officers to bring any member of this court before him who may be absent.

BY THE PRESIDENT: The chair will rule that the point of order of the gentleman from King is well taken. The sergeant-at-arms will ascertain if he can find Senators Stevenson and Hutchinson and bring them before the bar of the Senate.

BY SENATOR ALLEN: Has the sergeant-at-arms an assistant?

BY THE PRESIDENT: I think not.

BY SENATOR ALLEN: I move that the sergeant-at-arms be instructed to employ assistants, if necessary, to find these two gentlemen.

BY SENATOR PAULHAMUS: I second the motion.

BY THE PRESIDENT: It is moved and seconded that the sergeant-at-arms be instructed to employ assistants. As many as are in favor of the motion will say "Aye"; those opposed, "No." The ayes have it. The sergeant-at-arms is authorized to employ assistants. This not being under the call of the Senate, or a call of the court, the secretary will read a resolution.

BY THE SECRETARY: Resolution by Senator Knickerbocker: "Resolved, That the Senate of the State of Washington, sitting as a court of impeachment, by the passage of this resolution expresses its high appreciation of the thorough and masterly manner in which the Schively impeachment trial has been presented by the board of managers and their counsel, and by counsel for the respondent, and of the general courtesy shown by opposing counsels."

BY SENATOR KNICKERBOCKER: I move the adoption of the resolution.

BY SENATOR PAULHAMUS: I second the motion.

BY SENATOR KNICKERBOCKER: I have nothing particular to say regarding this resolution, but this resolution was not made by me for empty words. During the early part of these impeachment proceedings some little criticism was had upon the manner in which

these impeachment proceedings were being presented, and I want to say to this Senate that, having sat here for nearly three weeks, and listened to the impeachment proceedings, I think both sides have presented the matter ably and well.

BY THE PRESIDENT: The question is upon the adoption of the resolution as read. As many as are in favor of the resolution will say "Aye"; those opposed, "No." The motion is unanimously carried.

BY SENATOR PRESBY: While we are waiting for the sergeant-at-arms to report, there is one matter that I think might as well be acted upon. I move that the clerk be instructed to return all exhibits filed in this case to the parties who are respectively entitled to the possession of them, after the same have been extended upon the record.

BY SENATOR PAULHAMUS: I second the motion.

BY THE PRESIDENT: It has been moved and seconded that all exhibits filed in this case be returned to the parties entitled to them, after they have been extended upon the records of this court. As many as are in favor of the motion, say "Aye"; those opposed, "No." The ayes have it. I will state at this time that, under the resolution passed this afternoon, the chair is going to read that resolution to mean that each senator may have five minutes on each article of impeachment. If the Senate is not satisfied with that interpretation, this is a good opportunity to change it.

BY SENATOR KNICKERBOCKER: I did not just catch the resolution as it was finally adopted, but I would like to ask if the resolution provides that any explanation be in writing and sent to the desk, to be read by the secretary?

BY THE PRESIDENT: It may be in writing or it may be made orally on the floor, according to the resolution.

[*Senator Stevenson appears at the bar of the Senate.*]

BY SENATOR ALLEN: We might at this time receive the apology from the gentleman from the flock of counties.

BY SENATOR STEVENSON: The apology is accepted.

BY MR. MANAGER EDGE: Mr. President, I do not know whether or not any provision has been made for the printing of the records of this case, and I would suggest, if there has not, it might be a good plan now during the interim, before the arrival of Senator Hutchinson, to determine the matter, whether or not the record will be printed in book form, and if so, how many copies. I think the record should be preserved.

BY THE PRESIDENT: I am under the impression that the provision has been made. I will have the secretary look it up, however.

BY THE SECRETARY: Resolution of Senator Allen, adopted on the sixtieth day of the legislative session, is as follows: "*Resolved by the Senate, That after the close of the impeachment proceedings, the secretary, under the direction of the president, have printed such a number of copies of the record in the impeachment proceedings as in his judgment may be necessary,*" etc.

BY SENATOR ALLEN: I think that is sufficiently plain.

BY THE PRESIDENT: I will say at this time that the resolution leaves a good deal of discretion to the president of the Senate, and I will state to the Senate what number I would have printed at this time, in order that if my views don't meet those of the senators, the number may be fixed. If left to my discretion, I would order 500 copies printed.

BY SENATOR ALLEN: Mr. President, I hardly believe that would be ample for the distribution that will be required. Every state library in the United States will require a copy. A good many of us will want copies. I move that the number be placed at 1,500.

[*Motion seconded.*]

BY THE PRESIDENT: Before I put the motion, I will say that the chair has no pride as to his opinion, simply thinking that he would have this number printed in order that the matter might be determined at this time by the members of the Senate. It is moved and seconded that 1,500 copies be printed. As many as are in favor of the motion will say "Aye"; those opposed, "No." The chair is in doubt. As many as are in favor of 1,500 copies will arise and stand until counted.

BY SENATOR PRESBY: Mr. President, I would like to ascertain what the additional cost would be. I presume Senator Allen could tell us the approximate additional cost, or the relative cost of the 1,500.

BY SENATOR ALLEN: I have no idea, but I would say that the original cost for 500 will be largely out of proportion to the cost of the additional thousand, and the probabilities are that the additional thousand copies would cost in the neighborhood of seventy-five cents to one dollar each.

BY SENATOR COTTERILL: It occurs to me that a mean between these two figures is reasonably right. For instance, if we make a rough estimate, every member of the legislature and the state officers will desire to have one; that would call for probably two or three hundred here in the state. The larger demand will probably be met before we reach a thousand, and I move to substitute 1,000 for 1,500.

BY SENATOR PAULHAMUS: I second the motion.

BY THE PRESIDENT: The senator from King moves as a substitute that 1,000 copies of the impeachment proceedings be printed.

BY SENATOR ALLEN: I will accept the substitute.

BY THE PRESIDENT: The substitute is accepted. The question is now upon the motion made by the gentleman from King county, Senator Cotterill. As many as are in favor of the printing of 1,000 copies will say "Aye"; those opposed, "No." The ayes have it. The motion is carried.

BY SENATOR PIPER: I do not know what the procedure will be tonight. I would like to see us get down to work. I think if we have to wait on Senator Hutchinson, we will have to wait a long while, and I don't see why we should delay in this work we have before us. We ought to get down to voting. I move that we proceed and take up article No. 2.

BY SENATOR EASTHAM: I second the motion.

BY THE PRESIDENT: It has been moved and seconded that the Senate proceed—

BY SENATOR PAULHAMUS: Is it not out of order to take up any matter when there is a call of the Senate?

BY THE PRESIDENT: This is not a call of the Senate.

BY SENATOR PAULHAMUS: Is it not practically the same thing?

BY THE PRESIDENT: The chair will not so hold. The chair will leave that, preferably, entirely with the Senate.

BY THE PRESIDENT: In order to make that matter clear, the president is of the opinion that it is in the power of the presiding officer at this time to order any member before the bar without the call of the Senate. However, in this matter the president is going to be governed entirely by the members of this Senate and by the members of this court. At this time, the question before the Senate is the motion of the senator from King, Senator Piper, that we proceed to take up article No. 2. Are you ready for the question? The chair is of the opinion that every senator who is to vote on these articles should be present when we proceed to consider the articles. That is only the opinion of the chair, however. As I said before, I would be governed entirely by the vote of the Senate.

BY SENATOR METCALF: I think the chair is entirely right in the matter, and we should take no proceedings this evening until every member who is in the city is present.

BY SENATOR RYDSTROM: I move that we take a recess for five minutes.

BY SENATOR BRYAN: I want to concur with the remarks of the senator who has just preceded me. I believe that every senator, all of the forty who are in attendance upon this court, ought to be here and take part in everything that is done in the way of deliberation or otherwise in the determination of this cause, and for that reason I am opposed to proceeding with any further feature of the case until the senator arrives.

BY THE PRESIDENT: I should probably rule on the motion of the senator from Pierce county, Senator Rydstrom, at this time. The chair does not feel that under the circumstances a motion to take a recess or adjourn can be entertained. It will be necessary for us to proceed as we are, and the motion to take a recess cannot be entertained, or until we feel that we must take a recess until tomorrow. The question before the Senate is on the motion of Senator Piper, that we proceed to take up article 2. As many as are in favor will arise and stand until counted.

*[Twelve Senators arise.]*

Those opposed will arise.

*[Twenty-two senators arise.]*

The motion is lost. The chair is going to recede from the statement of a few moments ago, a little, and the Senate may be at ease,

but the chair will ask that the senators do not pass without the door. The Senate will be at ease for a few moments.

[*The president calls the Senate to order.*]

BY THE SERGEANT-AT-ARMS: Mr. President, Senator Hutchinson.

BY SENATOR ALLEN: Mr. President, I move that the secretary proceed to call the roll on article No. 2.

BY THE PRESIDENT: It is moved and seconded that the Senate now take up article No. 2. As many as are in favor of the motion say "Aye"; those opposed, "No." The ayes have it.

BY SENATOR HUTCHINSON: Mr. President, I rise to a question of personal privilege. I understand that some of the senators during my absence have been calling me a dirty cur and other names. I want to say that I was sick listening to the hot air this afternoon, and I did not propose to stay here and listen to the hot air this evening. I had a sick headache and I took a walk for three or four miles and tried to get rid of it. I am here prepared to cast my vote. I have never shirked any issue in this legislature.

BY SENATOR FALCONER: I think it is due to the gentleman that the chair announce to him that no one has called him a cur or any name like that.

BY SENATOR WILLIAMS: I personally heard one of the members call him a dirty cur.

BY SENATOR FALCONER: In open session?

BY SENATOR WILLIAMS: In open session.

BY SENATOR WHITNEY: Yes, I heard Senator Allen call him that.

BY SENATOR HUTCHINSON: There is not a man here who can call me that to my face—here or any place else.

BY THE PRESIDENT: The secretary will read rule No. 20.

BY THE SECRETARY: [*Reading.*] "At the conclusion of the evidence and the arguments the secretary of the Senate shall read the several articles successively, and after the reading of each article the secretary shall put the question of guilty or not guilty to each senator, who shall arise in his place, as follows: 'Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offence charged in this article?' Each senator shall thereupon answer, 'Guilty' or 'Not guilty,' and his vote shall be so recorded, and, in addition, he may have entered upon the record an explanation of his vote."

BY THE PRESIDENT: Now, does the Senate desire to make their explanations previous to the roll call, or conform strictly to the rule, each having the privilege to file a written statement with the secretary explaining his vote, or explain five minutes orally. The secretary will call the roll.

BY SENATOR COTTERILL: I believe we have already decided our procedure by the resolution of Senator Allen: That the secretary shall call the roll, and if you will refer to that, it says that the explanations are to be given and the roll call shall proceed without



interruption; that is the wording of that resolution; so that after reading of the article we may all have the benefit of all the explanations before the roll call.

BY THE PRESIDENT: The chair is of the opinion that after the reading of the article the explanations should be made before the roll call.

BY SENATOR BOOTH: I would suggest, then, that the secretary call the roll, and as each gentleman's name is called that he arise and make his explanation, if he cares to.

BY THE PRESIDENT: That is in strict conformity with the rules.

BY SENATOR BOOTH: In order that the explanations may be orderly, and not let every man jump up at once, let the secretary call the roll of the Senate, and each man stand up and explain, if he cares to.

BY SENATOR KNICKERBOCKER: I think that the suggestion made by Senator Booth is a good suggestion for an orderly dispatch of this business.

BY THE PRESIDENT: The chair will so hold, unless overruled. The secretary will call the roll and each senator who desires to explain his vote will arise in his place when his name is called and make any explanation that he desires. The secretary will read article No. 2.

[Article No. 2 read by the secretary.]

BY THE SECRETARY: Senator Allen.

BY SENATOR ALLEN: *Mr. President and Senators*—Probably no senator on this floor has greater reason for explaining his vote on these different articles of impeachment than have I. During the regular session of 1909, a session marked by turmoil, discussion and fractional strife, growing largely out of the question as to whether or not certain state officials should have their official acts and offices investigated by a committee of the legislature, I voted in every instance against the appointment of an investigating committee. A majority of the members of this Senate, including myself, believed the statements made in behalf of those officials, that nothing was wrong in their offices and that the demand for investigation was the result of political persecution on the part of their enemies.

During the closing hours of the last day of that session, a resolution for the appointment of such a committee prevailed. Without application or notification, I was appointed a member of that committee and later made chairman thereof.

I went into the investigation of the insurance department of the state prejudiced, if at all, in favor of Mr. Schively, but with a determination to do my full duty toward him, as well as the people of the state.

As progress was made in the investigation, it became apparent to me that the cry of political persecution was but the means adopted to prevent, if possible, the official discovery of improper practice and misconduct in the insurance department.

Although I had helped formulate and signed the report out of

which grew these impeachment proceedings, I had no hesitancy in taking the oath to sit as a member of this impeachment court, for the reason that I believed my mind to be in such a condition that, if the evidence produced by the respondent showed that either as to the law or the facts the investigating committee had made a mistake, I could render an impartial and just verdict.

There are three questions involved in these impeachment proceedings—three questions which each senator must settle for himself. These are:

*First.* Was Mr. Schively, as deputy insurance commissioner, a state official, and, under the terms of the constitution, liable to impeachment?

*Second.* Do the acts charged in articles 2, 3, 4, 17, 18, 19, 20, 21, 22, 23, and 24 constitute high crimes, misdemeanors and malfeasance in office as defined by the constitution?

*Third.* If so, have the charges been proven?

I have carefully listened to the law and arguments presented by counsel for the respondent and the state, as well as the evidence introduced by both sides, and I am satisfied that all three of the above questions should be answered in the affirmative.

In view of the conclusion, that the law and the evidence sustain the charges made in the above mentioned articles, and in the hope and belief that out of these impeachment proceedings will grow on the part of our public office-holders a greater sensibility of their responsibility to the people of the state, and that hereafter public office shall be more nearly considered a public trust, I will vote guilty to the articles above enumerated.

BY THE SECRETARY: Senator Anderson.

BY SENATOR ANDERSON: Mr. President, the evidence that has been here presented and my oath before this body is the only explanation for my vote.

BY THE SECRETARY: Senator Arrasmith.

BY SENATOR ARRASMITH: Mr. President, I have no explanation.

BY THE SECRETARY: Senator Bassett.

BY SENATOR BASSETT: I have sent an explanation to the desk, explaining my vote on articles 2, 3 and 4.

BY THE SECRETARY: [*Reading.*] "Mr. Schively testified that the moneys demanded of and received from the insurance companies were divided equally between Mr. Nichols and himself. Either was to make the examination of such companies. Both were principals in the receipt of the money, and both were principals, according to his testimony, as to the making of the examinations, the division of the money, or the payment of their respective expenses in the making of any examination. No account was kept of any such moneys demanded, received, divided, and kept. If anything had happened to Mr. Nichols and Mr. Schively, so far as the insurance companies were concerned, the money was gone and they would have had to pay for another examination. No account was ever entered of the

name of any company that so paid any money for such purpose. The examinations were not made. The money could not be returned, even if on hand, because it is not known by which companies it was paid. Some companies have withdrawn from the State of Washington, and if in existence at all, are not doing business in this state. There have been practically no examinations. There has been no offer to refund the money. The insurance commissioner of this state wrongfully withholds it from the companies that have not been examined or that have withdrawn from the state. This statement is an explanation of my vote."

BY THE SECRETARY: Senator Blair.

BY SENATOR BLAIR: I shall vote as I do because I believe Mr. Schively took moneys contrary to the law made to govern the insurance office, and kept no record of it, and used it for his own use and did not turn it over to the state.

BY THE SECRETARY: Senator Booth.

BY SENATOR BOOTH: I have no explanation to make.

BY THE SECRETARY: Senator Brown.

BY SENATOR BROWN: Mr. President, I have not prepared a speech and have very little to say in regard to this matter. I have listened to the evidence brought in by both parties. According to the evidence of John H. Schively, I would have to vote guilty.

BY THE SECRETARY: Senator Bryan.

BY SENATOR BRYAN: Mr. President, in arriving at a conclusion as to the guilt or innocence of the respondent under the articles of impeachment exhibited, and on which evidence has been submitted, I take the view that we are charged with the duty of determining whether or not John H. Schively has been guilty of such crimes or misdemeanors in connection with the matters charged in the articles exhibited as to render him unfit and unworthy to hold the office of insurance commissioner of the State of Washington.

If from the evidence and under the law of the civilized world, as defined by the common law, or the statutes of the State of Washington, it has been shown in this trial that the respondent has committed any crime or misdemeanor, which is charged in these articles, and it is of such a nature as to show his disqualification for the office he now holds, I conceive it to be my duty to find him guilty and by that vote to remove him from his office; otherwise, I am to vote not guilty.

According to my view, it is immaterial to the determination of this action whether the respondent was an officer of the State of Washington at the time of the commission of the offense charged. It appears from the evidence in this case that the legislature was first appraised of the alleged wrongdoing of the respondent a few weeks after he assumed the duties of the office of insurance commissioner of this state. If the contention of the defense to the effect that this Senate is powerless to impeach an officer for any act not committed subsequent to his election to the office from which it is sought to impeach

him is tenable, then, indeed, the State of Washington is left in an awkward and pitiable condition in this instance.

A man has been elected and has assumed the duties of state insurance commissioner who, by his own admissions on the stand in this case, had just prior to his election wrongfully received an indefinite sum of money from various insurance companies, and appropriated the money to his own use; has defrauded the people of the state by allowing such insurance companies to conduct business in this state under absolute immunity from examination.

It is gratifying to know that under the constitution and under the precedents in impeachments we have the right, and it is our duty, to impeach the respondent if he has committed any of the impeachable acts complained of, either while in office or out of office.

Having these views as to the jurisdiction and duty of the Senate, sitting as a court of impeachment in this matter, and the truth of the facts charged in the articles having been established by the evidence and by the admissions of the respondent, except as to the perjury charge, I shall vote "Guilty." I do not believe the perjury charge has been established beyond a reasonable doubt, and the respondent being bound over to answer under that charge in the superior court of Spokane county, I shall vote not guilty as to that charge.

BY THE SECRETARY: Senator Cameron.

BY SENATOR CAMERON: Mr. President, I have no explanation to make in regard to how I am to vote.

BY THE SECRETARY: Senator Cotterill.

BY SENATOR COTTERILL: *Mr. President and Fellow Senators*—In giving judgment upon the articles of impeachment now presented for decision, I desire to present and enter upon the record some of the reasons which compel the verdict I must render. This explanation will apply generally, but is now specifically directed to articles 2, 3, 4, and 16.

Throughout practically the entire twenty years of his residence in this state I have enjoyed and maintained a continuous, unbroken friendship with the respondent in this case. Upon his denial, I discredited and dismissed the general assertions and attacks made during the primary campaign last year, attributing them to the prejudice and hostility of factional opponents. During the regular session of the legislature, I supported every effort which led finally to the appointment of the joint investigating committee, considering it to be no less a matter of justice to Mr. Schively than to the State of Washington. It was my belief that the work of such a committee, by a sifting inquiry, would either crystallize and confirm or scatter and dismiss that which up to that time was idle rumor or unsupported charges. When that committee reported to the extraordinary legislative session, I regarded its report as in the nature of a presentment by a grand jury, and opposed every suggestion of acting upon it which did not afford to Mr. Schively the trial provided for such cases by the constitution of the state. I have at all times and on every occasion

insisted upon and aided to secure for this respondent that which he had a right to have and has now received—a full and fair trial, with every opportunity to make his defense and to be heard in his own behalf.

I must now discharge the solemn duty imposed by the oath administered to and taken by me, “to do impartial justice according to the constitution and the laws and according to the law and the evidence.” These four articles of impeachment, eliminating all other evidence upon them save that of Mr. Schively himself, have established beyond question that in his official capacity Mr. Schively demanded and received, as a condition necessary and precedent to the entrance of certain insurance companies to do business in this state, large fees not authorized by law; that these fees were exacted under color of office as an advance examination fee or flat rate, which was a departmental system or policy; that these fees were divided between Mr. Nichols and Mr. Schively, upon their receipt, and no account, either official or private, kept of them; that no examinations were ever made in any of the instances referred to in these articles, nor in the ten or eleven other instances introduced as corroborative evidence of the system; that in several of the cases the companies have withdrawn from the state and their money has not been returned, except in the single Lebo case (article 2), and then only after a legal demand had been made and suit threatened. The only attempt at defense from this admitted state of facts is the placing of responsibility upon his superior officer, Samuel H. Nichols, and their common reliance upon the advice of the attorney general. Without discussing the informal unwritten character of this alleged advice, evolved from the hazy memory of the ex-attorney general, given at least two years after the practices sought to be justified by it had been in vogue, but giving to these two technical legal defenses their full force and effect, I am confronted with the fact that they were absolutely negated and cast aside by:

*First*, The division of the money between Nichols and Schively and appropriation to their private accounts;

*Second*, The failure to make or keep any accounting of fees which, under any interpretation, were trust funds received for a particular public purpose by public officials; and,

*Third*, The failure to either make the examinations or return the money before the expiration of the tenure of office, beyond which neither Mr. Nichols or Mr. Schively had any assurance of their ability or authority in the matter.

If such actions be not crimes or misdemeanors or malfeasance in office, then the words have no meaning in law or in fact. If it be not extortion, or unjust, arbitrary and oppressive conduct, to demand, to receive, to fail to give consideration for, to fail to make accounting for or return such fees exacted under color of office, but rather to divide and personally appropriate such moneys, then language is a useless gift.

To declare this respondent not guilty upon these charges would be to declare that these actions admitted by Mr. Schively are justified, are officially honest, are in accordance with law.

Mr. President and gentlemen, not even my long-time friendship for the respondent, and the intense sympathy for his family which draws heavily upon my heartstrings, could justify such a declaration. The State of Washington will live when John H. Schively and the members of this Senate are gone and forgotten, and the verdict which we shall render upon the law and the evidence will be a part of the records of our state, to go on and on through all history.

For a century and a quarter self-government under a democratic republic has been on trial in America. The final test of the endurance of our free institutions is integrity in official life. We are now squarely confronted with the startling doctrine that official dishonesty, official plunder, official extortion, can be protected behind the technical defenses of a broad interpretation of law, and be beyond the jurisdiction of human tribunals. If so, then let me say, in the language of another, spoken under circumstances like our own, "Then the tidal wave of corruption will soon engulf us in its foam and its raging and the dark stain upon the history of this state will not be washed away in a hundred years."

Under the oath I have taken, my answer to the question upon these articles must be guilty.

BY THE SECRETARY: Senator Cox.

BY SENATOR COX: Mr. President, the explanation sent in by Senator Bassett has my name signed to it, and my explanation will be the same as that of Senator Bassett.

BY THE SECRETARY: Senator Davis.

BY SENATOR DAVIS: Mr. President, my duty under the oath taken and my conscientious interpretation of the evidence is the explanation of my vote on each article of impeachment.

BY THE SECRETARY: Senator Eastham.

BY SENATOR EASTHAM: Mr. President, I have no explanation to offer for my vote.

BY THE SECRETARY: Senator Falconer.

BY SENATOR FALCONER: Mr. President and senators, I shall answer the roll call when the secretary calls my name, and vote according to the law and the evidence.

BY THE SECRETARY: Senator Fatland.

BY SENATOR FATLAND: Mr. President, I shall answer when the roll is called, and my vote will be based upon what has seemed to me during this trial to have been borne out by the evidence and the law.

BY THE SECRETARY: Senator Fishback.

BY SENATOR FISHBACK: Mr. President, as a member of the investigating committee, I should very much have liked to have been excused from participating in this trial. I saw no way by which this could be done. I took the oath; I have listened attentively to every

word spoken by counsel on both sides, to all the evidence that has been given, and I shall vote to the best of my knowledge and belief according to the evidence that has been given. In regard to this particular article No. 2, which is now before us, I feel that Mr. Schively made a great mistake in the position that he took, but, having refunded the money, I am going to give him the benefit of the doubt, and on this particular article I shall vote not guilty.

BY THE SECRETARY: Senator Hutchinson.

BY SENATOR HUTCHINSON: Mr. President, when my name is called I shall vote as my convictions tell me. I have a protest against this investigation as it was carried on, which I desire to have read when I vote, if I can have it read after I have voted. If not, I would like to have it read now.

BY THE PRESIDENT: The chair is of the opinion it should be read at this time.

BY SENATOR HUTCHINSON: *Mr. President and Gentlemen of the Senate*—I protest against the investigation of the various offices of the state as it has been conducted, for the reason that it has been largely under the direction of the acting governor, M. E. Hay, who, to my mind, is a political faker. I say so advisedly, and I call your attention to the fact that notwithstanding there were charges against the board of control, the governor reappointed a member of that board for a period of six years, previous to an investigation of those charges; and for the further reason that the acting governor has sent for and written to members of this Senate, asking them to vote for a direct primary bill for the election of persons to fill vacancies in the different offices, but he has not called those same men to his office; neither did he write to them when the question of the direct primary for the supreme judges was before the Senate, when his influence might have gotten the one vote which was needed to pass the bill.

I protest against it further, for the reason that it is a well-known fact that the powers which direct the administration are after John H. Schively and after Mr. Ross, the state land commissioner. I want to say here and now that should either of those men be proven guilty, I stand ready to vote "Aye" on their conviction, but I cannot overlook the fact that this investigation has degenerated into the persecution of those two men, and while I shall vote aye should either of them be proven guilty, I deplore the fact that others who have defrauded the state are not being prosecuted.

I again call the attention of the Senate to the fact that I have voted aye on every action for an investigation committee, but I wanted an honest investigation of all, and not the persecution of one or two. I ask the people to read the report of the legislative committee submitted to the special session of the legislature, June 23d, 1909.

BY THE SECRETARY: Senator Huxtable.

BY SENATOR HUXTABLE: I have no apologies to offer.

BY THE SECRETARY: Senator Kline.

BY SENATOR KLINE: Mr. President, I have no explanation.

BY THE SECRETARY: Senator Knickerbocker.

BY SENATOR KNICKERBOCKER: Mr. President, not now.

BY THE SECRETARY: Senator McGregor.

BY SENATOR MCGREGOR: No explanation.

BY THE SECRETARY: Senator McGowan.

BY SENATOR MCGOWAN: Mr. President, I have no explanation to offer as to my vote on article No. 2.

BY THE SECRETARY: Senator Metcalf.

BY SENATOR METCALF: Mr. President, I am prepared to vote on article No. 2 without offering any explanation.

BY THE SECRETARY: Senator Myers.

BY SENATOR MYERS: Mr. President, I don't care to make any explanation of my vote on this article.

BY THE SECRETARY: Senator Minkler.

BY SENATOR MINKLER: Mr. President, I have no explanation.

BY THE SECRETARY: Senator Paulhamus.

BY SENATOR PAULHAMUS: I have no explanation.

BY THE SECRETARY: Senator Piper.

BY SENATOR PIPER: Mr. President, I have no explanation.

BY THE SECRETARY: Senator Polson.

BY SENATOR POLSON: Mr. President, I have no explanation.

BY THE SECRETARY: Senator Potts.

BY SENATOR POTTS: Mr. President, I have no explanation.

BY THE SECRETARY: Senator Presby.

BY SENATOR PRESBY: *Mr. President and Gentlemen of the Senate—*

During the trial of this impeachment there has been but one question that has arisen regarding the several charges of extortion in the articles of impeachment which has occasioned me any doubt, and that is a question of law—not of evidence. It goes to the jurisdiction of this Senate sitting as a court of impeachment, and whether its power under the constitution of this state will render legal any judgment against the respondent attaching to those articles of impeachment. This question is whether the respondent at the time of the alleged offenses was a state officer, in contemplation of the constitution. I have given the discussion of this question close attention and have made a personal research into the law, and I am satisfied that at the time of the commission of these offenses the respondent was not such officer, but, in law, an agent for his principal. He had no investment or tenure of office, and could appoint no deputy. Had his principal died, his deputyship would have expired. He was an ordinary deputy—not a state officer—and, therefore, cannot legally be impeached upon those charges. For this reason only I shall vote not guilty on these charges.

BY THE SECRETARY: Senator Roberts.

BY SENATOR ROBERTS: Mr. President, I have no explanation.

BY THE SECRETARY: Senator Rosenhaupt.

BY SENATOR ROSENHAUPT: Mr. President, my explanation is the one



already read, which is signed by Senators Bassett and Cox and myself.

BY THE SECRETARY: Senator Rydstrom.

BY SENATOR RYDSTROM: Mr. President, as to article 2, the money was returned, and for that reason I shall vote not guilty.

BY THE SECRETARY: Senator Smith.

BY SENATOR SMITH: Mr. President, I have no explanation to make on my vote.

BY THE SECRETARY: Senator Smithson.

BY SENATOR SMITHSON: I have no explanation to make of my vote.

BY THE SECRETARY: Senator Stevenson.

BY SENATOR STEVENSON: Mr. President, the explanation of my vote on article 2 is with the secretary.

BY THE SECRETARY: [*Reading.*] "*Mr. President and Senators—I regard Mr. John H. Schively as having been a public official since his appointment as deputy insurance commissioner, and that as a public officer he exceeded his authority and was guilty of an attempt at extortion when he represented to Mr. Lebo that the price of admission for insurance companies was any amount beyond that prescribed by statute, and that he was guilty of extortion when he settled on a basis of \$235 for the admission of the Commercial Fire Insurance Company, of Texas, and the Southern National Fire Insurance Company, of the same state, although the evidence shows that he received but \$174.00 in cash and \$300 in notes, all of which were subsequently returned. I am of the opinion that the settlement shows an attempt on the part of John H. Schively to extort an unreasonable and extortionate fee unwarranted by law. This is the explanation of my vote on article No. 2.*"

BY THE SECRETARY: Senator Stewart.

BY SENATOR STEWART: Mr. President, John Schively is one of my warmest personal friends, but on my oath as a senator I shall vote guilty on some of the articles. In article 2, however, I will vote not guilty, as the fact the money was returned to Mr. Lebo showed to some extent, at least, an effort to return money collected which was not earned. On many of the other articles, however, I shall be compelled by the evidence as I have heard it, to vote guilty, as I deem them proven. On article 25, in which perjury is charged, I shall vote not guilty, as I do not think the charge proven, as it should be, beyond the shadow of any doubt.

BY THE SECRETARY: Senator Whitney.

BY SENATOR WHITNEY: Mr. President, I have no explanation.

BY THE SECRETARY: Senator Williams.

BY SENATOR WILLIAMS: In casting my vote, as I will, of not guilty to this article of impeachment No. 2, and to all the other articles, I want to say in explanation of it that I feel myself in duty bound to be governed by my oath. If I understand the oath I took,

I swore I would try this case on the law and the evidence, and in taking that oath I do not see how I can do so if I allow myself to use anything but the law and evidence that has been given in this case to base my verdict on. From the law that has been read by both sides, I am satisfied that Mr. Schively was not a public officer in the State of Washington until he took his present office in January. And I understand also from the law that the managers give us that I cannot impeach a man for something he did when he was not an officer; but, besides this law, as read by Mr. Lee and Mr. Schively's attorney, and the testimony, I am convinced in my own mind that what money was collected, either for examination or after examinations, on the flat basis of \$200, was done under a belief by Mr. Nichols and Mr. Schively that it was legal to do so, instead of an itemized statement, under the advice that the attorney general had given them. It seems to me that it is conceded that this man is entitled to a reasonable doubt in this trial, the same as in any other, and that if I follow my oath to try him fairly and impartially, this evidence is not enough to prevent a doubt of an honest intention by him to follow the law. These are the reasons, Mr. President and fellow members of the Senate, why I vote not guilty.

BY THE SECRETARY: Mr. President.

BY THE PRESIDENT: No explanation.

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

BY SENATOR HUTCHINSON: Mr. President, I only heard two of these articles tried. I am prepared to vote on them, but do I have to vote on the ones I did not hear?

BY THE PRESIDENT: That will be for the determination of the Senate.

BY SENATOR HUTCHINSON: I heard articles—the evidence on articles 24 and 25, and am prepared to vote on them, but I was not here on the others, and I could not be here.

BY THE PRESIDENT: It is a question for the Senate to decide. Shall Senator Hutchinson be excused from voting on article No. 2? It would require a two-thirds vote on the part of the Senate to excuse Senator Hutchinson.

BY SENATOR PAULHAMUS: Mr. President, I move that the senator be compelled to vote. He is not excused.

BY SENATOR ALLEN: I second the motion.

BY THE PRESIDENT: It is moved and seconded that Senator Hutchinson be not excused. As many as are in favor of the motion will say "Aye"; those opposed, "No." The ayes have it.

BY SENATOR HUTCHINSON: On all those articles I did not hear, I shall vote not guilty.

[Roll call on article No. 2.]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair,

Brown, Bryan, Cotterill, Cox, Davis, Falconer, Fatland, Metcalf, Myers, Paulhamus, Polson, Stevenson—17.

Voting not guilty: Senators Booth, Cameron, Eastham, Fishback, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Minkler, Piper, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stewart, Whitney, Williams, Mr. President—23.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, on article 2 the vote stands, guilty 17, not guilty 23.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 2.

BY THE PRESIDENT: The secretary will read article No. 3.

[Article No. 3 read.]

BY THE PRESIDENT: Does the Senate desire to pursue the same course we did on the previous article—to call the roll and let each senator arise and explain if he desires, as his name is called?

During the roll call on article No. 3 the following explanations were offered:

BY SENATOR KNICKERBOCKER: Mr. President, at this time I desire to explain my vote upon the guilt or innocence of respondent under article No. 3. The same explanation will apply with almost equal force to all of the articles preceding article No. 25.

It is contended by the honorable board of managers and their counsel that this is a political trial, a proceeding to remove an official alleged to be corrupt and unworthy, as distinguished from a trial in the ordinary course of law, and this impeachment court has practically upheld that contention. No attempt has been made to introduce even a scintilla of evidence that the office of insurance commissioner has not been well managed since the respondent became the official head of that office. This and other charges allege that respondent as deputy insurance commissioner collected examination fees in advance; that in some instances no examinations have been made, and that in other instances the traveling and other actual expenses in making such examinations were less than the examination fees paid in advance. I am not prepared to say that the charging of an examination fee in advance was a bad departmental rule under the laws that existed at the time of the alleged offense specified in the several articles preceding article No. 25, but I do think that the advance examination fees should have been set aside as a special fund, to be used only for the payment of actual expenses in making examinations. However, it appears that all of these advance examination fees were collected when Sam Nichols was secretary of state, and *ex-officio* insurance commissioner. I am satisfied that the weight of authority sustains the contention of respondent, that respondent was not a public officer at the time of the commission of the alleged offenses. I am also satisfied that under the provisions of our state constitution Mr. Schively, when

deputy insurance commissioner, could not be impeached, for the reason that he was not then a state officer, and that the fact that he has since been elected insurance commissioner does not now render him liable to impeachment for acts committed as such deputy.

In the case of the State of Washington *ex rel. Stearns v. Smith*, reported in the 6th Washington, page 496, which was a proceeding in mandamus to require respondent, as ex-treasurer of the board of regents of the Agricultural College, to turn over certain moneys alleged to be in his possession to his successor in office, the relator, our supreme court, speaking through Judge Stiles, said:

Sec. 4, Art. 4, of the constitution confers upon this court original jurisdiction in mandamus as to all state officers, and the only question to be determined upon the demurrer is as to whether the respondent is a state officer within the meaning of the section mentioned.

As a general rule, the term "state officer" is only applied to those superior executive officers who constitute the heads of the executive departments of a state. The constitution does not in terms say who the state officers shall be, but it is noticeable that the third, or executive, article, which is devoted entirely to these superior officers of the state, closes with paragraph 25, wherein it is first provided that no person excepting a citizen of the United States and a qualified elector of this state shall be eligible to hold any state office, and also that the compensation for state officers shall not be increased or diminished during the term for which they have been elected. As used in this connection, the framers of the constitution evidently had in mind only the officers for which article 3 provided. Again, in article 3 of the constitution, the second section provides that the governor and other state and judicial officers, except judges and justices of courts not of record, shall be liable to impeachment; and the third section provides that all officers not liable to impeachment shall be subject to removal for malfeasance in office in such manner as may be provided by law. If state officers should be taken to include all officers who have to do with the state's business, officers of all grades would be subject to removal by impeachment only, and there would be no use of paragraph 3. But it is a matter of general, as well as legal knowledge, that impeachments do not lie against any but the superior officers of a state, and that it is usually limited to the executive and to the judiciary, and this was the intention in this article.

The authority which I have just cited seems to squarely sustain the conclusions which I have just announced. The evidence fairly establishes the fact that at all times Sam Nichols was the head of and controlled the policies of the insurance department. Again, this is to a certain extent a political trial. The question is not, however, whether this Senate would, if given the power, elect Mr. Schively to the office of insurance commissioner. It is a matter of common knowledge that these same charges were widely published throughout this state during the summer and fall of 1908, and the facts charged then and proved here were not denied by the respondent at that time. Notwithstanding these charges, the respondent received at the September primaries a majority of first choice votes cast over his three republican opponents and received a majority of nearly 50,000 at the general November election. In the light of these facts, it would seem

that the Senate might well hesitate before voting the respondent guilty. For these reasons I intend to vote not guilty upon article No. 3.

BY SENATOR MYERS: Mr. President, I have always admired the genial personality of Mr. John H. Schively, since I have known him, and up to this hour I bear him no ill will. I am responsible to the people of my district and to the State of Washington and to my God, under the oath I have taken here, to decide this case according to the testimony and evidence given. I have been near the battle here, and I have been in close proximity to all of the testimony. I have been in my seat all of the time during this tedious trial. I have watched every gesture and every word from respondent's counsel and from counsel for the state. I have scrutinized carefully the demeanor of every witness, and, Mr. President, in the face of all of this evidence and of all of the testimony, I must declare my vote as against Mr. Schively in every instance, except article No. 25.

BY SENATOR RYDSTROM: Mr. President, article No. 3 charges the collection of \$100 for the examination of a Boston Company. I do not consider \$100 to be excessive, and for that reason I shall vote not guilty.

BY SENATOR HUTCHINSON: I desire to reiterate what I said before—that I shall vote no on every article that I did not hear.

BY SENATOR PIPER: Mr. President, I would like to have the secretary read my explanation.

BY THE SECRETARY: By Senator Piper: "Courts of impeachment are created for the purpose of reaching those in the seats of the mighty who cannot be removed from official authority by trial in our ordinary courts. This, at least, is my opinion, formed by reading the proceedings of other impeachment trials, and confirmed by authorities cited in this trial. It would be ridiculous to assume that a man employed by a state official, as was Schively by Nichols, and subject to removal at the will of the employer, should be brought before a court of impeachment."

[*Roll call on article No. 3.*]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, McGregor, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Smithson, Stevenson, Stewart—24.

Voting not guilty: Senators Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGowan, Minkler, Piper, Potts, Presby, Roberts, Rydstrom, Smith, Whitney, Williams, Mr. President—16.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote on article 3 stands, guilty 24, not guilty 16.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 3.

BY THE PRESIDENT: The secretary will read article No. 4.

[*Article No. 4 read by the secretary.*]

BY THE PRESIDENT: Are there any explanations to be offered on article No. 4? If not, the secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[*Roll call on article No. 4.*]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, McGregor, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—25.

Voting not guilty: Senators Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGowan, Minkler, Piper, Potts, Presby, Roberts, Smith, Whitney, Williams, Mr. President—15.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote on article No. 4 stands, guilty 25, not guilty 15.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 4.

BY THE PRESIDENT: Article No. 17 is the next article. The secretary will read article No. 17.

[*Article No. 17 read by the secretary.*]

During the roll call the following explanations were had on article No. 17:

BY SENATOR COTTERILL: *Mr. President and Gentlemen*—Supplementing the explanation already given as to my vote upon the previous articles of impeachment, and with particular application to articles 17 and 18, the evidence of Mr. Schively leaves me no escape from the conclusion that after making the examinations, and at that time having full knowledge of the necessary and actual expenses, he submitted no expense account, as required by law, but demanded and received lump sums admittedly in excess of his expenses and collected without regard to them, and upon his return to Olympia divided what was left with Mr. Nichols. Such admitted action compels me to render a verdict of guilty upon these articles.

BY SENATOR MYERS: Mr. President, If I remember the testimony under this article, Mr. Schively represented that the flat rate of \$200 should be charged, and that this was finally settled upon a basis of \$100, and as I have been of the opinion all the way through that Mr. Schively was an officer all of the time—that he had all of the power of an officer, that he had the prerogative to cancel that certificate—hence I cannot screen him on a legal technicality.

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[*Roll call on article No. 17.*]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair,

Booth, Brown, Bryan, Cameron, Cotterill, Cox, Falconer, Fatland, Fishback, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—23.

Voting not guilty: Senators Davis, Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Minkler, Piper, Potts, Presby, Roberts, Smith, Whitney, Williams, Mr. President—17.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote upon article 17 stands, guilty 23, not guilty 17.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article 17.

BY THE PRESIDENT: The secretary will read article No. 18.

[Article No. 18 read by the secretary.]

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[Roll call on article No. 18.]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—24.

Voting not guilty: Senators Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Minkler, Piper, Potts, Presby, Roberts, Smith, Whitney, Williams, Mr. President—16.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote on article 18 stands, guilty 24, not guilty 16.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 18.

BY THE PRESIDENT: The secretary will read article No. 19.

[Article No. 19 read by the secretary.]

During the roll call on article No. 19 the following explanations were offered:

BY SENATOR RYDSTROM: Mr. President, I just want to explain my vote of not guilty. I will not vote guilty. In fact, I believe that all of the officers of this concern are crooked. I would not believe any of them if they were to swear on a stack of Bibles ten feet high. For that reason I will vote not guilty.

BY SENATOR BROWN: Mr. President, in explaining my vote on this article, in regard to this company, I want to say that I have a letter here from a farmer up in our country that was insured in this company. The letter is from the receiver of that company, stating that this man will not be paid this account; that it will have to go into court with the other accounts. This man has little children up there that need this money, and I believe that it was the place of the insur-

ance department to notify the people of this state that it was not a responsible company, and I will vote guilty on all of these charges.

BY SENATOR COTTERILL: *Mr. President and Gentlemen*—In articles 19, 20 and 21, as distinguished from his defenses to the preceding articles, or in addition to them, Mr. Schively sought to justify the fees or charges then collected, or part of them, as being payment for personal services rendered in an expert or advisory capacity, to insurance companies under his jurisdiction. Such admissions evidence a class of misconduct or malfeasance in office which seems to me peculiarly reprehensible. It would be intolerable, and an open invitation to official corruption, if we should here and now declare that the deputy and *de facto* insurance commissioner of the State of Washington, appointed, salaried and trusted by the people to protect them against unsafe insurance companies, can lawfully accept fees for assisting one home company to pass the examination for entrance into Idaho, getting another's reports in shape to enter New York and other states, and again reshaping or reorganizing certain Portland companies so that they might pass muster in our own and other states. And even these fees for personal services, Mr. Schively testifies, were divided with Mr. Nichols. Thus was the entire insurance department of the state committed to the approval of companies, two of which, it was testified, have already gone into the hands of receivers. Such a defense leaves to me no other alternative than to answer to these articles with a verdict of guilty.

BY THE PRESIDENT: The secretary will call the roll on article No. 19.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[*Roll call on article No. 19.*]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Falconer, Fatland, Fishback, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Smithson, Stevenson, Stewart—22.

Voting not guilty: Senators Davis, Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Minkler, Piper, Potts, Presby, Roberts, Rydstrom, Smith, Whitney, Williams, Mr. President—18.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote on article No. 19 stands, guilty 22, not guilty 18.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 19. The secretary will read article No. 20.

[*Article No. 20 read by the secretary.*]

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[*Roll call on article No. 20.*]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair,



Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—24.

Voting not guilty: Senators Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Minkler, Piper, Potts, Presby, Roberts, Smith, Whitney, Williams, Mr. President—16.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote on article No. 20 stands, guilty 24, not guilty 16.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 20. The secretary will read article No. 21.

*[Article No. 21 read by the secretary.]*

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

*[Roll call on article No. 21.]*

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Smithson, Stevenson, Stewart—23.

Voting not guilty: Senators Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Minkler, Piper, Potts, Presby, Roberts, Rydstrom, Smith, Whitney, Williams, Mr. President—17.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote stands on article No. 21, guilty 23, not guilty 17.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 21. The secretary will read article No. 22.

*[Article No. 22 read by the secretary.]*

BY SENATOR METCALF: Mr. President, I think under this charge the respondent has been guilty of an impropriety, but not sufficient to warrant an impeachment, and I shall therefore vote not guilty.

BY SENATOR ALLEN: Mr. President, those are my sentiments on the article before us now.

BY SENATOR COTTERILL: *Mr. President and Gentlemen*—While article 22 involves a violation of the letter of the law, yet considered by itself, it is rather technical than substantial. The asking and receiving of \$50 in a lump sum is so nearly equivalent to the actual and necessary expenses of an examination trip to Spokane and return, which was actually made, and seems scarcely to justify its inclusion as an article of impeachment. It serves only to afford a contrast with the gross misconduct of the preceding articles. Upon this article my answer is not guilty.

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[*Roll call on article No. 22.*]

Voting guilty: Senators Falconer, Fishback, Myers, Paulhamus, Polson—5.

Voting not guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Fatland, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Minkler, Piper, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Whitney, Williams, Mr. President—35.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote stands on article No. 22, guilty 5, not guilty 35.

BY THE PRESIDENT: Therefore, the defendant stands acquitted under article 22. The secretary will read article 23.

[*Article No. 23 read by the secretary.*]

BY SENATOR COTTERILL: *Mr. President and Gentlemen*—Upon this article 23, the proof offered evidences in the last analysis an unauthorized and arbitrary demand, which was not complied with, and a subsequent withdrawal from such demand when the matter was considered between Mr. Schively and Mr. Best. Surely this entire episode is more than reprehensible. It sheds a flood of light upon the variable and discriminating workings of the departmental policy of which we have heard so much. If this be not misconduct and malfeasance of a public official, then the word is meaningless. I shall therefore vote upon this article guilty.

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[*Roll call on article No. 23.*]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Smithson, Stevenson, Stewart—22.

Voting not guilty: Senators Cameron, Eastham, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Minkler, Piper, Potts, Presby, Roberts, Rydstrom, Smith, Whitney, Williams, Mr. President—18.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote on article No. 23 stands, guilty 22, not guilty 18.

BY THE PRESIDENT: The defendant, therefore, stands not guilty under article No. 23. The secretary will read article No. 24.

[*Article No. 24 read by the secretary.*]

BY SENATOR HUTCHINSON: *Mr. President and Gentlemen of the Senate*—I vote guilty on article 24 for the reason that if Mr. Schively did not know the condition of the Pacific Live Stock Insurance Company when he took charge of it, he undoubtedly soon became aware of

the fact that it was rotten, and he owed it to the people of this state to expose it instead of recommending it as most reliable and stable.

BY SENATOR COTTERILL: *Mr. President and Gentlemen*—Practically all that I have said in explanation of my vote of guilty upon other articles applies in the case of this. There is added, however, the palpable neglect of his public duty; the admitted drawing of a double salary for three months by Mr. Schively; the discreditable and peculiarly aggravated connection of the responsible deputy insurance commissioner of this state with the management of the Pacific Live Stock Association. If there is one thing that has been demonstrated in this trial more than another it has been the general bad management, speculative and unsafe character and all-round rottenness which characterized this Live Stock concern throughout its career of plunder, and brought it to a timely finish. The voluntary connection of Mr. Schively with this concern, whose managers and methods the evidence shows that he had known from its inception, constitutes the most flagrant sort of misconduct and malfeasance in office. There is for me no other possible verdict upon this article than that of guilty.

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[*Roll call on article No. 24.*]

Voting guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Falconer, Fatland, Fishback, Hutchinson, McGregor, Metcalf, Myers, Paulhamus, Polson, Rosenhaupt, Rydstrom, Smithson, Stevenson, Stewart—26.

Voting not guilty: Senators Eastham, Huxtable, Kline, Knickerbocker, McGowan, Minkler, Piper, Potts, Presby, Roberts, Smith, Whitney, Williams, Mr. President—14.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote on article No. 24 stands, guilty 26, not guilty 14.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 24. The secretary will read article No. 25.

BY SENATOR ROSENHAUPT: Mr. President, I move that we suspend the rules and omit the reading of article No. 25, and proceed with the roll call.

[*Motion seconded.*]

BY THE PRESIDENT: The chair is of the opinion that the motion is wise. It will take a two-thirds vote, however, to suspend the rules. All those who are in favor of the motion will say "Aye"; those opposed "No." The motion is carried.

BY SENATOR ALLEN: Mr. President, the charge of perjury preferred against the insurance commissioner, Mr. Schively, in article No. 25 is a very serious offense. I do not believe that the charge has been sustained by the evidence here introduced. It will be tried out later in the courts of Spokane county. I shall therefore vote not guilty.

BY SENATOR BROWN: Mr. President, in regard to article No. 25, I believe that John H. Schively signed those notes, but the question is with me whether we should excuse him for being intoxicated. I believe that he signed the notes and when he testified before that grand jury that he did not sign them he testified falsely. The question is whether or not he was intoxicated. I will vote not guilty for that reason.

BY SENATOR HUTCHINSON: *Mr. President and Gentlemen of the Senate*—I listened closely to the evidence on article 25, and there is a doubt in my mind as to the guilt of Mr. Schively on the perjury charge, and as Mr. Schively is under indictment in the superior court of Spokane county, and said court will pass on his guilt or innocence of said charge, I give him the benefit of the doubt and vote not guilty, leaving this question to the court.

BY SENATOR FALCONER: Mr. President, in voting not guilty on this article 25 I want to say I believe I am stretching a point and going a long way to give Mr. Schively the benefit of the doubt.

BY SENATOR FATLAND: Mr. President, as it has not been proven to me beyond a doubt, the guilt of Mr. Schively here, I will vote not guilty on this charge 25.

BY SENATOR COTTERILL: *Mr. President and Gentlemen*—With reference to this perjury charge, embodied in article 25, now before us for decision, and particularly considering that this charge involves a felony, I have considered the matter precisely as if a member of the jury in a criminal court, trying the identical offense. After patiently listening to all the evidence and argument, making careful mental review of the mysteries, lapses and conflicts developed in the evidence, considering that the crucial and convicting features of this case are a matter of varying memory between conflicting witnesses, I am not convinced beyond a reasonable doubt that the respondent committed willful perjury, and must therefore answer as to this article, not guilty.

BY THE PRESIDENT: The secretary will call the roll.

BY THE SECRETARY: Mr. Senator, how say you, is the defendant, John H. Schively, insurance commissioner of the State of Washington, guilty or not guilty of the offense charged in this article?

[*Roll call on article No. 25.*]

Voting not guilty: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Paulhamus, Piper, Polson, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Whitney, Williams, Mr. President—40.

Absent or not voting: Senators Graves, Nichols—2.

BY THE SECRETARY: Mr. President, the vote on article No. 25 stands, not guilty 40, guilty none.

BY THE PRESIDENT: The defendant, therefore, stands acquitted under article No. 25.

BY SENATOR COTTERILL: Mr. President, I move that the record of

this evening's session be examined, and if found correct, approved by the president.

BY SENATOR WILLIAMS: I desire to make a motion at this time, Mr. President.

BY THE PRESIDENT: Article No. 26 has not been dealt with, and there was no evidence submitted, but in order to clear the record I am of the opinion it would be just as well if we would call the roll on article No. 26.

BY SENATOR COTTERILL: Was not the article withdrawn by the board of managers?

BY MR. MANAGER MEIGS: The article was withdrawn, Mr. President.

BY SENATOR WILLIAMS: Mr. President, I desire at this time to make a motion to strike all frivolous remarks made during the absence of Senator Hutchinson, some time back, especially those words that referred to him as "Slippery Dick."

BY SENATOR ALLEN: I second the motion.

BY THE PRESIDENT: It is moved and seconded that all frivolous remarks applied to Senator Hutchinson be stricken from the record.

BY SENATOR HUTCHINSON: I would like to speak for half a minute on that. I want to say that eighteen years ago when a member of this legislature, in which I have served a greater portion of the time ever since, I denounced the thieves that stole the land of this state. Some of them owned a country paper, and called me "Slippery Dick." But no man calls it in my hearing or I will beat him until he can't walk. I want to say that two years ago in the House I opposed a motion to raise the salary of the state board of control, and in connection with that motion I said that I was well acquainted with Mr. Jones, Mr. Piles, and Mr. Davis, and that they were not worth \$166 per month, which the state was paying them, and that no man would hire them for \$125 per month, because they could not earn their salary, and why increase their pay to \$250 per month and take that much out of the people's pockets? That they were not worth it. Since that time they have been traveling up and down the state calling me names. At the beginning of the last legislature I introduced a resolution asking for an investigation of the men that were ruining the state. When that failed, I introduced a bill asking for an investigation, and since then those men who are drawing salaries and who have destroyed the state have traveled up and down the state at the state's expense calling me names. I care not for that where I am known, but the people here don't know me. Where I live I can come here as often as I desire, because the people know when I tell them I will do a thing I will do it. I point with pride to twenty years of service in the legislature, and I defy you to show one single crooked vote. I have nothing but contempt for the thieves behind my back, when they take my name in vain.

BY SENATOR FALCONER: Now that Brother Hutchinson has relieved himself, I want to make a motion at this time, that I think is just, as regards the Senate, as well as Mr. Hutchinson, and that is that the communication placed here before this Senate before the roll call and

before the roll call of his name be expunged from the records, as well as the speech which the gentleman has just made, which I understand has been taken by the stenographer, and I make a motion that both be expunged from the record.

BY THE PRESIDENT: The chair is of the opinion that the rules of the impeachment court allow each member to file his statement of his reason for his vote as he chooses, and that the statement filed before Senator Hutchinson voted cannot be expunged from the record. You may expunge all the rest.

BY SENATOR FALCONER: I rise to a point of order. A two-thirds vote will expunge it. It will be in order, will it not?

BY THE PRESIDENT: The same thing, then, would apply to that put upon the record by any other senator in that case, although you will understand that while the chair considers it an injustice to expunge any senator's remarks or explanation from the record of his vote, the chair cannot rule the Senate. The Senate can rule the chair. I shall, however, hold that Senator Hutchinson's explanation of his vote cannot be expunged from the record.

BY SENATOR FALCONER: Will you entertain a motion, if it is seconded, to expunge the speech the gentleman just made, as well as the explanation, from the record?

BY THE PRESIDENT: Do you offer that as an amendment?

BY SENATOR FALCONER: I offer it as a motion.

BY THE PRESIDENT: There is a motion before the house that the remarks made during his absence be expunged. Do you offer this as an amendment to that motion?

BY SENATOR FALCONER: I certainly do, for the reason that the remarks made during his absence, some of them, were out of place and others of them were entirely in place, and I will offer as a substitute my motion. If I may speak further, I do this for this reason: Senator Hutchinson has gone all over the field of politics in his explanation of his vote, and I don't think that he does himself justice to go outside of the issues before this body and politically rip up the reputation of some one who has nothing to do with this court of impeachment.

BY THE PRESIDENT: The chair will state the condition of the question before the house as he understands it, and then, if he is not right, we will listen to the members of the Senate. The motion before the Senate was that all reference made to Senator Hutchinson during his absence be expunged from the records. Senator Falconer moved to amend by including the speech made by Senator Hutchinson at this time. Do I state the motion correctly?

BY SENATOR FALCONER: And his explanation of the vote.

BY THE PRESIDENT: Then, the chair will have to rule the entire amendment out of order, if that is included.

BY SENATOR COTTERILL: I think that this Senate is in very poor business expunging from the records matters which have been said. Let a man stand by his record. If the particular frivolous remark made is desired to be withdrawn, the gentleman who made it can ask

and secure unanimous consent. I hope we will pass no motion in this body to expunge anything that has been placed on the record.

BY SENATOR COX: This whole thing seems to me like child's play. It reminds me of a quarrel I had with my child, and when it was all over she would come and say, "Papa, let's kiss and make up." Now, I think you gentlemen ought to kiss and make up. I think what Senator Hutchinson said ought to be expunged from the records, as well as what Senator Allen said. I think they are both hot tempered, and I don't believe that this record should show it.

BY THE PRESIDENT: The chair is endeavoring to be absolutely fair to get this straightened out, and the chair must hold that Senator Falconer's motion is out of order when he included the expunging of the explanation.

BY SENATOR ALLEN: At the time the motion was made by Senator Williams I was on my feet endeavoring to get the attention of the chair for the purpose of asking permission that the reference I made to Senator Hutchinson at that time be expunged from the record, and he beat me to it, and I will ask now unanimous consent.

BY THE PRESIDENT: I would ask Senator Falconer to withhold his amendment and take up this other matter separately, or else you will have to appeal from the decision of the chair.

BY SENATOR FALCONER: If the chair has ruled my motion out of order, I do not think it is up to Senator Falconer.

BY THE PRESIDENT: The chair has ruled it out of order. All in favor of the motion made by Mr. Williams—

BY SENATOR COTTERILL: Did you not receive the request of Senator Allen that his remark, which was the only frivolous remark, be withdrawn? It seems to me it would be much better to let it go from the record that way.

BY THE PRESIDENT: If Senator Allen was the only one who made a frivolous remark—

BY SENATOR COTTERILL: I believe that he was.

BY THE PRESIDENT: The chair is not of that opinion. Senator Allen's request is well understood by the members of the Senate, but there were some other frivolous remarks made. All in favor of the motion will say "Aye"; those opposed, "No." The motion is carried.

BY SENATOR FALCONER: Now, as a matter of information, who decides what portion of these remarks were frivolous?

BY THE PRESIDENT: That would apply to all the remarks made during Senator Hutchinson's absence.

BY SENATOR COTTERILL: I take it, then, that that applies only to the remarks and not to any motion or action taken by the Senate at that time.

BY THE PRESIDENT: No action taken by the Senate.

BY SENATOR ROSENHAUPT: I move that this court adjourn *sine die*.

BY THE PRESIDENT: Just a moment before I put the motion. The question has been asked as to whether or not the chair has authority after this court of impeachment adjourns to sign vouchers for some of

the bills. The board of managers have some bills, and the chair himself is in doubt as to his authority in the matter.

BY SENATOR ALLEN: I move that the president and secretary be authorized to sign any vouchers presented to them by the board of managers or for other expenses that may have been incurred during this impeachment trial, which have not been paid, or may be incurred in the next day or two in closing up the business.

BY THE PRESIDENT: The chair is of the opinion that it would be much better. The stenographers will take it. It is moved and seconded that the secretary of the Senate and the president of the Senate be authorized to issue vouchers for those expenses incurred during the impeachment trial not yet paid; also those bills necessary to close up the proceedings, and the secretary will call the roll on the authorization.

[Roll call.]

Voting aye: Senators Allen, Anderson, Arrasmith, Bassett, Blair, Booth, Brown, Bryan, Cameron, Cotterill, Cox, Davis, Eastham, Falconer, Fatland, Fishback, Hutchinson, Huxtable, Kline, Knickerbocker, McGregor, McGowan, Metcalf, Myers, Minkler, Piper, Poison, Potts, Presby, Roberts, Rosenhaupt, Rydstrom, Smith, Smithson, Stevenson, Stewart, Whitney, Williams, Mr. President—39.

Absent or not voting: Senators Graves, Nichols, Paulhamus—3.

BY SENATOR COTTERILL: Mr. President, I renew the motion made a few moments ago, that the president and secretary be authorized to review, correct and certify the records of today's proceedings.

BY THE PRESIDENT: It is moved and seconded that the president and secretary be authorized to review and approve the record of today's proceedings, and to certify the court of impeachment proceedings. Those in favor say, "Aye"; those opposed, "No." The motion is carried.

BY THE PRESIDENT: It has been regularly moved and seconded that this court of impeachment now adjourn *sine die*. All in favor say, "Aye"; those opposed, "No." The motion is carried.

At 11.29 o'clock p. m., the Senate, sitting as a court of impeachment, adjourned *sine die*.

We do hereby certify that the foregoing is a true and complete copy of the records of the Senate of the State of Washington sitting as a court of impeachment for the trial of John H. Schively, state insurance commissioner.

WM. T. LAUBE,  
Secretary.

A. S. RUTH,  
President.



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